

(26,478)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 432.

GODCHAUX COMPANY, INCORPORATED, PLAINTIFF IN
ERROR,

vs.

ALBERT ESTOPINAL, JR., SHERIFF OF THE PARISH OF
ST. BERNARD, AND THE BOARD OF DRAINAGE COM-
MISSIONERS OF THE BAYOU TERRE AUX BŒUFS
DRAINAGE DISTRICT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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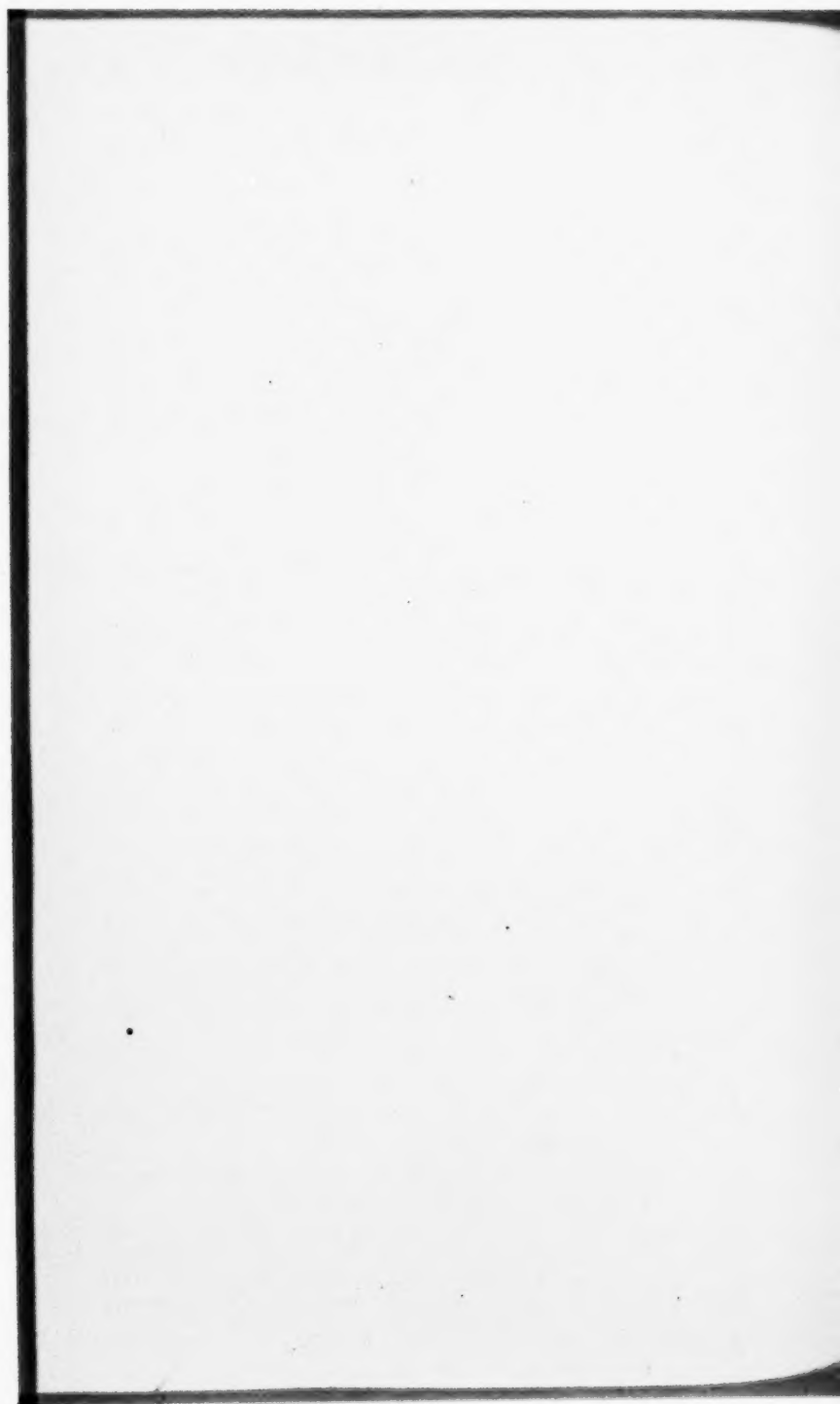
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1 STATE OF LOUISIANA,
Parish of St. Bernard:

29th Judicial District Court for the Parish of St. Bernard.

Petition.

Filed May 29th, 1916.

29th Judicial Dist. Court, Parish of St. Bernard.

No. 1051.

GODCHAUX COMPANY, Incorporated,

versus

ALBERT ESTOPINAL, JR., Sheriff of the Parish of St. Bernard.

To the Honorable R. Emmet Hingle, Judge of the Twenty-ninth
Judicial District Court for the Parish of St. Bernard, Louisiana:

The petition of the Godechaux Company, Incorporated, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, with respect represents:

I.

That it is the owner and has been for a number of years of a certain plantation situated in the Parish of St. Bernard, lying on both sides of the Bayou Terre aux Boeuf, and containing in area about four thousand acres, known as the Contreras Plantation, and that a portion of that plantation has been cultivated by it as a plantation and by its predecessors in title for perhaps one hundred years; that the lands forming the plantation consist of high lands lying along the banks of the Bayou Terre aux Boeuf, which gradually slope

back until they reach the swamp which is at about tide level;
2 that there is about one thousand acres or less of said plantation that is susceptible of gravity drainage; that the remainder of the property, to-wit, about three thousand acres must be leveed and pumped in order to be drained and reclaimed.

II.

Your petitioner shows that there was assessed against the said property for the year 1915 an acreage tax of sixteen cents per acre, which it is asserted is assessed against the same on account of a certain election held by the qualified electors in the Bayou Terre aux

Boeufs Drainage District on the 10th day of January, 1911, for the purpose of imposing the said acreage tax.

III.

That while your petitioner admits that under the Constitution and laws of the State of Louisiana, the property taxpayers qualified as electors under the Constitution and laws of the State of Louisiana have the authority to impose an acreage tax not exceeding fifty cents per acre at an election held for that purpose, for the purpose of draining the lands in the said District, yet only such tax can be imposed upon those lands that are susceptible of gravity drainage, for the Constitution expressly declares that all those lands that must be leveed and pumped in order to be drained and reclaimed, no taxes can be levied against them or bonds issued for their reclamation, except upon the petition of landowners owning in area not less than two-thirds of the acres to be affected by the drainage.

IV.

Your petitioner shows that the three thousand acres of land above referred to which it declares must be leveed and pumped is that character of land contemplated by the Constitution and laws of Louisiana, and therefore that any tax which is attempted to be imposed upon the said property by virtue of an election is absolutely null and void, and does not and cannot drain or benefit the drainage of said lands.

V.

Your petitioner now shows that notwithstanding the invalidity of the said tax, *that* it has actually been placed upon the assessment roll, and Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, is demanding said forced contribution or acreage taxes from
3 your petitioner and is threatening to advertise for sale and sell its said property for said forced contribution or acreage tax unless the same is promptly paid.

VI.

Your petitioner now shows that it has paid all the taxes that are legally collectible against the said property, all State, Parish, Levee and drainage taxes authorized by law, and that it has tendered to the said Albert Estopinal, Jr., Sheriff, sixteen cents per acre upon each and every acre of land owned by it in the Bayou Terre aux Boeufs Drainage District which is susceptible of gravity drainage, and that it has refused to pay the said sixteen cents acreage tax upon those lands that must be leveed and pumped in order to be drained and reclaimed, but notwithstanding this tender of the taxes really due, the said Sheriff persists in his demand for the remainder of the taxes and will, unless restrained by an order of your Honorable Court and

an injunction regularly issued herein, proceed to advertise the entire property for the amount claimed to be due for the said sixteen cents acreage tax and will actually sell said property at tax sale for the purpose of paying the said taxes unless thus restrained.

VII.

Your petitioner shows that such a sale would be a cloud upon the title to its property and would cause it great and irreparable injury, and therefore that a writ of injunction duly issued out of your Honorable Court served upon the said Albert Estopinal, Jr., Sheriff, restraining and prohibiting him from advertising for sale or selling the above described property for the sixteen cents acreage tax, is necessary to protect it in its legal rights.

Wherefore, the premises considered, your petitioner prays for service hereof and citation on the said Albert Estopinal, Jr., Sheriff, according to law, and on final trial, he prays for judgment decreeing that the sixteen cents acreage tax which is assessed against that part of the property of your petitioner included in the plantation above described which is not susceptible to gravity drainage, to-wit, about three thousand acres, but which must be leveed and pumped, is illegal, null and void and of no effect, and that the Sheriff be perpetually restrained and enjoined from demanding or enforcing the collection of said tax, either by the advertisement and sale of
4 petitioner's property or otherwise, and that the assessment against said property be entirely cancelled. Your petitioner further prays that the said Albert Estopinal, Jr., Sheriff, be ordered to accept the amount tendered of the sixteen cents acreage tax as the full amount of taxes due by your petitioner, and that your petitioner be given full receipt and acquittance for all of such tax. It prays for all such other and further remedy and relief as the nature of the case may require and law and equity permit.

(Signed) FOSTER, MILLING, SAAL & MILLING,
Attorneys for Petitioner.

STATE OF LOUISIANA,
Parish of Orleans:

Personally came and appeared before me, the undersigned authority, Mrs. Charles Godchaux, who being by me first duly sworn, deposes and says that he is President of the Godchaux Company, Incorporated, petitioner herein, and that all the facts and allegations set forth in the foregoing petition are true and correct, and that a writ of injunction is necessary to protect petitioner's legal rights.

(Signed) CHARLES GODCHAUX,
President Godchaux Co., Inc.

Sworn to and subscribed before me this 23rd day of May, 1916.

(Signed) SIDNEY E. FEIBLEMAN,
[SEAL.] *Notary Public.*

Order.

On considering the foregoing petition, prayer and affidavit, it is ordered that a writ of injunction do issue out of this Honorable Court, directed to Hon. Albert Estopinal, Sheriff of the Parish of St. Bernard, State of Louisiana, restraining and prohibiting him, his deputies, agents and all other persons, from advertising for sale or offering for sale, or otherwise attempting to enforce the collection of the sixteen cents acreage tax assessed against that portion of Contreras Plantation as described upon the assessment rolls for the Parish of St. Bernard lying in the Bayou Terre aux Boeufs Drainage District which must be leveed and pumped in order to be drained and reclaimed, until further orders of this Honorable Court, upon petitioner giving bond with good and solvent surety, in the sum of Two Hundred & Fifty Dollars, made payable in the manner required by law.

Ordered and signed on this the 29th day of May, 1916.

(Signed)

R. EMMET HINGLE, *Judge.*

Service accepted.

(Signed) ALBERT ESTOPINAL, JR., *Sheriff.*

St. Bernd. Parish, May 29/16.

5 *Writ of Injunction to be Served on Albert Estopinal, Jr., Sheriff, and Return.*

Filed May 29th, 1916.

STATE OF LOUISIANA,
Parish of St. Bernard:

Twenty-ninth Judicial District Court.

No. 1051.

GODCHAUX COMPANY, Incorporated,

versus

ALBERT ESTOPINAL, JR., Sheriff.

The State of Louisiana to Albert Estopinal, Jr., Sheriff, Greeting:

You are hereby commanded, enjoined, prohibited and restrained, in the name of the State of Louisiana, and of the 29th Judicial District Court of Louisiana, in and for the Parish of St. Bernard, from advertising for sale, and selling for the Sixteen (16¢) Cents Acreage Tax the following described property, to-wit: A certain portion of ground situated in the Parish of St. Bernard, in this State, lying on both sides of the Bayou Terre-aux-Boeufs, and containing in area

about four thousand (4,000) acres, and known as the Contreras Plantation. Assessed in the name of Leon Godchaux Co., Incorporated. Until the further Orders of this Court.

Witness the Honorable R. Emmet Hingle, Judge of our said Court, this 29th day of May, A. D. 1916.

(Signed)

JAS. D. ST. ALEXANDRE,

[SEAL.]

Clerk.

Received the within injunction on the 29th day of May, 1916, and on the same day & date served a copy of same on Albert Estopinal, Jr., Sheriff, in person.

(Signed)

FERDINAND BEL, D. S.

6

Supplemental and Amended Petition.

Filed July 10th, 1916.

29th Judicial District Court, St. Bernard Parish.

No. 1051.

GODCHAUX COMPANY, Incorporated,

v.

ALBERT ESTOPINAL, JR., Sheriff.

To the Honorable the Judge of the 29th Judicial District Court, Holding Sessions in and for the Parish of St. Bernard, State of Louisiana:

The supplemental and amended petition of the Leon Godchaux Company, Limited, plaintiff in the above numbered and entitled cause, with leave of the Court first had and obtained, desires to supplement and amend its original petition so as to aver, as follows:

I.

It reiterates and reaffirms each and every allegation and the prayer of its original petition.

II.

It avers that the property described in its original petition as being swamp and marsh land, not susceptible of gravity drainage, cannot be drained by gravity and has not been benefitted by any of the works of gravity drainage inaugurated in the district and cannot be benefitted by the inauguration of any such contemplated work, and, therefore, that this forced contribution of sixteen cents (16¢) per acre is imposed not only in violation of the direct provision of the Constitution of the State of Louisiana, which prohibits the levying

of a tax upon such lands by the vote of the property taxpayers, but is also violative of the Constitution of the United States, and especially of the XIV amendment thereof, in that it is practically a confiscation of the property of the petitioner and is a taking of same without due process of law, in that the said property is of little or no value unless it is reclaimed and that it costs from thirty to forty dollars per acre to reclaim the land and a tax of sixteen cents (16¢) per acre per annum assessed thereon would not be used in any manner in connection with such reclamation and will amount to a confiscation of the property by the imposition of same, as the said property, as above averred, is of little value, not being worth over one or two dollars an acre, without a heavy cost for reclamation.

III.

Your petitioner further shows that, through an oversight, no rule nisi was issued prior to the granting of such preliminary injunction, nor was the Bayou Terre aux Boeufs Drainage District, through its Board of Drainage Commissioners, made parties to said proceedings, and your petitioner now shows that it desires, in order to conform to the provisions of Act 170 of 1898, to amend its petition originally filed herein so as to make the Bayou Terre aux Boeufs Drainage District, through its Board of Drainage Commissioners, parties to said proceedings and to cause a rule to issue out of your Honorable Court, directed to the said Albert Estopinal, Jr., and the Bayou Terre aux Boeufs Drainage District, through its Board of Drainage Commissioners, ordering them to show cause on some day and date to be fixed by your Honorable Court why a preliminary injunction should not issue herein as prayed for in the original petition.

Wherefore the premises considered, petitioner prays that this, its supplemental petition be allowed and filed, and that said petition, along with the original petition herein, be served upon Albert Estopinal, Jr., Sheriff, and the Board of Drainage Commissioners of the Bayou Terre aux Boeufs Drainage District, through its proper officer, and that a rule issue out of your Honorable Court, directed to the said Albert Estopinal, Jr., and the said Bayou Terre aux Boeufs Drainage District, ordering them and each of them to show cause on some day and date to be fixed by your Honorable Court why a preliminary injunction should not issue herein, directed to them, the said Albert Estopinal, Jr., and the said Board of Drainage Commissioners of the Bayou Terre aux Boeufs Drainage District, enjoining and prohibiting them, the said Albert Estopinal, Jr., and the said Bayou Terre aux Boeufs Drainage District from selling the property belonging to your petitioner described in the petition for the illegal sixteen cent (16¢) acreage tax, and why said tax should not be declared illegal, null, void and of no effect and said lands described in said petition as not susceptible of gravity drainage and should be exempt from the payment of said tax; and that, on final trial, be, the said Albert Estopinal, Jr., and the Board of Drainage

8 Commissioners of the Bayou Terre aux Boeufs Drainage District, acting for and on behalf of the Bayou Terre aux Boeufs Drainage District, be perpetually restrained and enjoined from demanding or enforcing the collection of said tax, either by advertising for sale the property of petitioner or otherwise, and that the assessment against said property be entirely cancelled and said tax be declared illegal, null, void and of no effect.

It further prays that the said Albert Estopinal, Jr., Sheriff, be ordered to accept the amount tendered, less the sixteen cent (16¢) acreage tax, as the full amount of taxes due by your petitioner and that your petitioner be given a full receipt and acquittance for all of such taxes.

It prays for all such further orders and decrees as may be necessary in the premises and law and equity permit.

(Signed)

FÖSTER, MILLING, SAAL
& MILLING,

Attorneys for Petitioner.

STATE OF LOUISIANA,
Parish of Orleans,
City of New Orleans:

Before me, the undersigned authority, personally came and appeared Charles Godechaux, who, being by me first duly sworn, deposes and says:

That he is the President of the Godechaux Company, Incorporated, and that all the facts and allegations contained in the original petition, as above set forth and sworn to, and all of the facts and allegations contained in the foregoing supplemental and amended petition are true and correct. So help him God.

(Signed)

CHARLES GODCHAUX, *President.*

Sworn to and subscribed before me at New Orleans, La., this 7th day of July, A. D. 1916.

(Signed)

THOS. E. FURLOW,

[SEAL.]

Notary Public.

9

Order.

On considering the original petition, prayer and affidavit, and the the amended and supplemental petition, prayer and affidavit herein filed;

It is Ordered that Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, and the Bayou Terre aux Boeufs Drainage District do show cause on the 27th day of July, 1916, at the hour of 10 o'clock A. M., why an injunction should not issue herein, as prayed for.

Ordered and signed at chambers on this the 10th day of July, 1916.

(Signed)

R. EMMET HINGLE, *Judge.*

Citation waived and services accepted.

(Signed)

ADAM ESTOPINAL,

President B. T. B. Drainage District.

Citation waived & service accepted.

(Signed) ALBERT ESTOPINAL, JR.,

Sheriff & T. C.

July 10/6.

10 *Supplemental Petition, Affidavit of Mr. H. C. Smith, Civil Engineer, and Plan.*

Filed July 27th, 1916.

29th Judicial District Court, Parish of St. Bernard, Louisiana.

No. 1051.

GODCHAUX COMPANY, Incorporated,

v.

ALBERT ESTOPINAL, JR., Sheriff.

Now into this Honorable Court comes the Godchaux Company, Incorporated, and shows unto the Court:

I.

That by mere clerical error the name of the Leon Godchaux Company, Limited, was used in its supplemental petition, instead of the Godchaux Company, Incorporated, and that it desires to amend same so as to aver that it is the supplemental and amended petition of the Godchaux Company, Incorporated, and not of the Leon Godchaux Company, Limited.

II.

That in the first paragraph of its original petition, it averred as follows:

"that there is about one thousand acres or less of said plantation that is susceptible of gravity drainage; that the remainder of the property, to-wit, about three thousand acres, must be leveed and pumped in order to be drained and reclaimed."

That it desires to amend that part of the first paragraph of its original petition so as to aver that since the filing of the original petition herein, it has caused an exact survey to be made and lines and levels run, to ascertain just what area is susceptible of gravity drainage, and that upon such survey being made by H. C. Smith, Civil Engineer and Surveyor, it finds that there are two hundred and thirty-seven and twenty-four-one-hundredths (237.24) acres of land on the left descending bank and three hundred and twenty-eight and twenty-eight-one-hundredths (328.28) acres on the right descending bank of the Bayou Terre-aux-Boeufs which are susceptible of gravity drainage, and no more; that the remainder of the said tract, to-wit, three thousand, six hundred and thirty-five

and fifty-two-one-hundredths (3635.52) acres, must be leveed and pumped in order to be drained and reclaimed, all of which will appear by reference to the affidavit of the said H. C. Smith, Civil Engineer and Surveyor, with a blue-print map attached to the same, hereto attached and made a part hereof.

11

III.

That it desires to amend its original petition further so as to make the remainder of said original petition conform to the acreage as herein above set forth wherever the same occurs, and to also aver that it tenders the amount of the acreage tax at sixteen cents (16¢) per acre due, on the five hundred and sixty-five and fifty-two-one-hundredths (565.52) acres, instead of on about one thousand acres as averred in its original petition, and that in all other respects it adopts the allegations and prayers of its original and supplemental petitions.

Wherefore, it prays that its original and supplemental petitions be amended so as to make the averments above set forth; that this its amended and supplemental petition be allowed and filed, and that the same be served upon Albert Estopinal, Jr., Sheriff, and the Board of Drainage Commissioners of the Bayou Terre aux Boeufs Drainage District, through its proper officer.

It further prays for an injunction and as in its original and supplemental petitions, and for all orders and decrees necessary in the premises, and for general relief.

(Signed)

FOSTER, MILLING, SAAL &
MILLING,*Attorneys for Petitioner.**Affidavit.*

STATE OF LOUISIANA,

Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Mr. Charles Godchaux, who being by me first duly sworn, deposes and says he is the President of the Godchaux Company, Incorporated, the petition herein; that he has read the original and supplemental petitions filed herein, as well as the foregoing supplemental petition, and that all the facts and allegations set forth and contained in each—the petition and supplemental petitions above described—are true and correct. So help him God.

(Signed)

CHARLES GODCHAUX.

Sworn to and subscribed before me at New Orleans, La., this 26th day of July, A. D. 1916.

(Signed)

SIDNEY L. FEIBLEMAN,

[SEAL.].

Notary Public.

Order.

On considering the foregoing supplemental petition, prayer and affidavit, it is ordered that the same be allowed and filed. Ordered and signed in Chambers on this, the 27 day of July, 1916.

(Signed)

R. EMMET HINGLE, *Judge.*

12

Service accepted, citation waived,
July 27, 1916.

(Signed)

“

THOS. E. FURLOW,

WALLACE A. NUNEZ,

*Counsel for Board of Commrs. Bayou
Terre-aux-Boeufs Drainage District.*

Service accepted and citation waived,
July 27/6.

(Signed)

ALBERT ESTOPINAL, JR, *Shf.*

29th Judicial District Court, Parish of St. Bernard, Louisiana.

No. 1051.

GODCHAUX COMPANY, Incorporated,

v.

ALBERT ESTOPINAL, JR., Sheriff.

Affidavit of Mr. H. C. Smith, Civil Engineer.

STATE OF LOUISIANA,

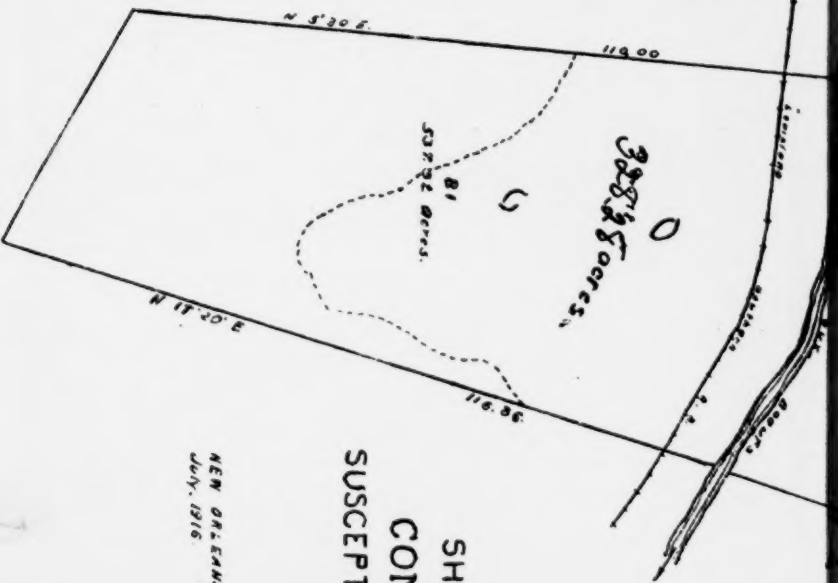
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Mr. H. C. Smith, who being by me first duly sworn, deposes and says:

That he is a Surveyor and Civil Engineer; that he had made a survey of the property belonging to the Godchaux Company, Incorporated, for the purpose of ascertaining what amount of said property is susceptible of gravity drainage, and after running lines and levels, he finds the following:

That on the right descending bank of the Bayou Terre aux Boeufs, there are three hundred and twenty-eight and twenty-eight-one-hundredths (328.28) acres of land susceptible of gravity drainage, and on the left descending bank, two hundred and thirty-seven and twenty-four-one-hundredths (237.24) acres; that the remainder of said tract, amounting to Three thousand, six hundred and thirty-five and fifty-two-one-hundredths (3635.52) acres, is land that must be leveed and pumped in order to be drained and reclaimed, and that the same will not drain by gravity.

ST. MARY.



*Wadeaux Co. } \$13.
U.
Estimate*

Scale. 20 Chs = 1 in.

MAP

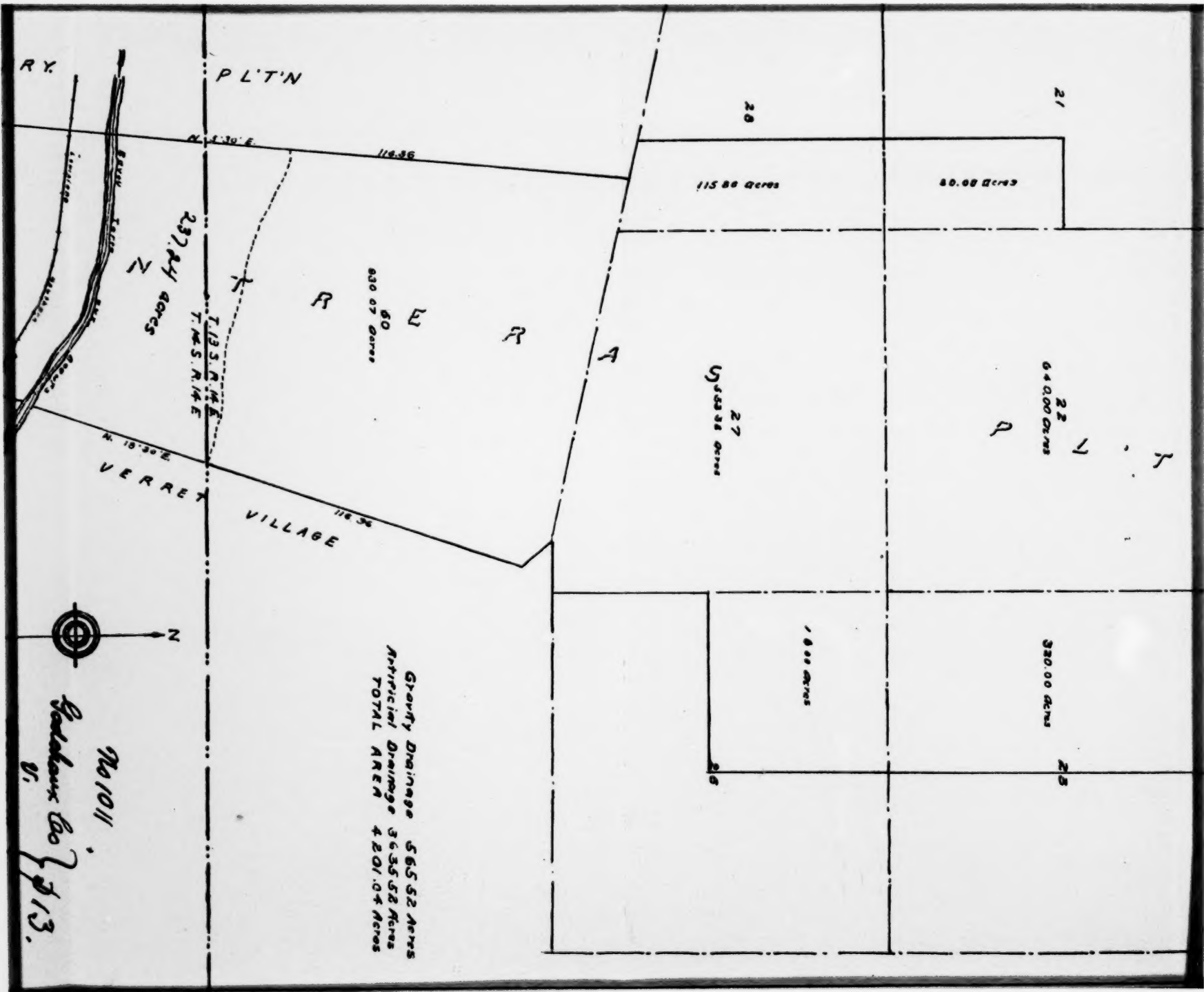
SHOWING THAT PORTION OF
CONTRERAS PLANTATION
SUSCEPTIBLE TO DRAINAGE BY GRAVITY

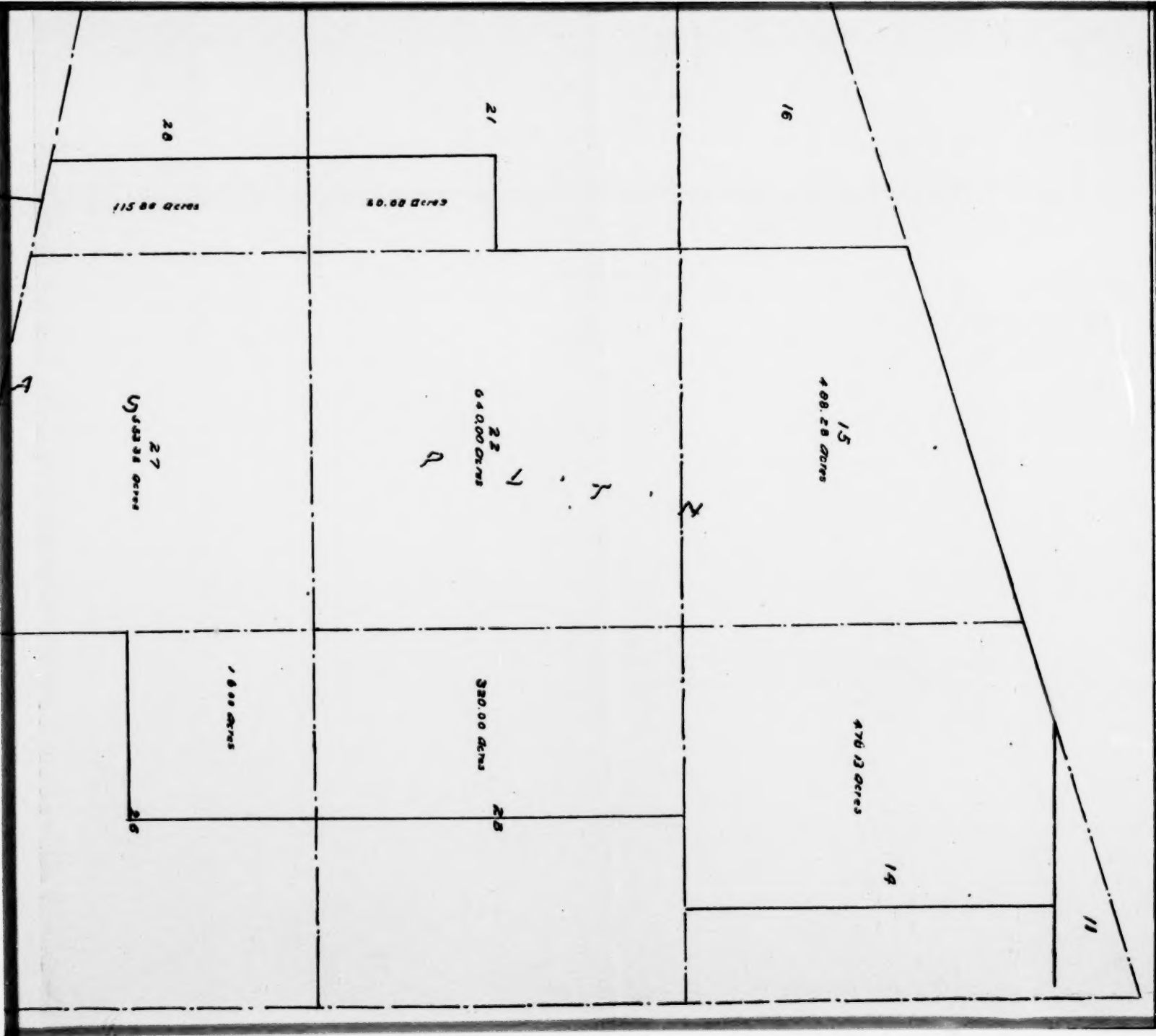
T'S J3 & 14 S. R14 E. SEDA E. OF R.
ST. BERNARD PARISH. LA.

NEW ORLEANS, LA.
JULY, 1916.

H.C. Smith
CIVIL ENGINEER & SURVEYOR

Plantation







That he attaches hereto and makes part hereof, a blueprint map showing the line of the limit of the land that can be drained by gravity on each side of the Bayou Terre-aux-Boeufs, which is indicated by a dotted line, and the area on each side of Bayou is placed thereon in figures.

(Signed)

H. C. SMITH.

Sworn to and subscribed before me at New Orleans, La., this 26th day of July, A. D. 1916.

(Signed)

[SEAL.]

SIDNEY L. FEIBLEMAN,
Notary Public.

13 *Blue Print, Marked "Plaintiff 1," Annexed to and Made Part
 of Foregoing Supplemental Petition.*

(Here follows blue-print marked page 13.)

Exception.

Filed July 27th, 1916.

29th Judicial District Court, Parish of St. Bernard, State of Louisiana.

No. 1051.

GODCHAUX CO., Inc.,

v.

ALBERT ESTOPINAL, JR., Sheriff of the Parish of St. Bernard, et als.

To the Honorable R. Emmet Hingle, Judge of the Twenty-ninth Judicial District Court in and for the Parish of St. Bernard, State of Louisiana:

Now, into court, come Albert Estopinal, Jr., Sheriff and ex-Officio Tax Collector, and A. C. Gonzales, Assessor of the Parish of St. Bernard, through Wm. Winans Wall, their Attorney, and for cause of exception to plaintiff's suit, with respect, shows:

That the special acreage tax sought to be annulled, cancelled and set aside herein was voted by the property owners within the limits of the Bayou Terre-aux-Boeufs Drainage District, in pursuance of Art. 281 of the Constitution and Act 256 of 1910, and in pursuance of the authority thus conferred on the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District has been levied and funded into negotiable bonds, to the payment of the interest and principal of which said tax has been pledged; that the bonds, into which said tax has been funded, have all been sold by the said Board of Drainage Commissioners for par, in accordance with law, and if the said tax sought to be annulled herein is annulled, there would not remain collectible of the said acreage tax sufficient to pay the interest and principal of said bonds, and, therefore, the holders of said bonds, being the owners of said acreage taxes, are necessary parties to this suit, and aver a non-joinder of the proper parties defendant.

Wherefore, exceptors pray that this suit may be dismissed at plaintiff's cost, and for general relief.

(Signed)

WM. WINANS WALL, *Attorney.**Certificate.*

I hereby certify that the above and foregoing exception, being well founded in law, is filed in good faith, and not merely for the purpose of delay.

New Orleans, La., July 26, 1916.

(Signed)

WM. WINANS WALL, *Attorney.*

15

Bond for Injunction.

Filed July 31st, 1916.

29th Judicial District Court, Parish of St. Bernard, Louisiana.

No. 1051.

GODCHAUX COMPANY, Incorporated,

v.

ALBERT ESTOPINAL, JR., Sheriff, et al.

Bond for Injunction.

Know all men by these presents, that we, the Godchaux Company, Incorporated, as principal, and Globe Indemnity Company as security, are held and firmly bound unto Hon. Albert Estopinal, Sheriff of the Parish of St. Bernard, and the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District, in the sum of One Thousand Dollars (\$1,000.00) lawful money of the United States of America, to be paid to the said parties, their heirs, executors, administrators and assigns, for which payment well and truly to be made, we bind ourselves, and each of us, by himself and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 31st day of July, 1916.

Whereas, the said Godchaux Company, Incorporated, has presented a petition to the Honorable the Twenty-ninth Judicial District Court in and for the Parish of St. Bernard, praying for a writ of injunction:

Now, the condition of the above obligation is, that we, the above bound, Godchaux Company, Incorporated, and Globe Indemnity Company will well and truly pay to the said Albert Estopinal, Sheriff, and the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District, the defendants in said cause, all such damages as they may recover against us, in case it should be decided that the injunction was wrongfully obtained.

GODCHAUX COMPANY, INCORPORATED,

(Signed) By CHARLES GODCHAUX,
President, Principal.

GLOBE INDEMNITY COMPANY,

(Signed) By C. HOLCOCK,
Its Attorney in Fact. [SEAL.]

Signed, sealed and delivered in the presence of

(Signed) W. C. SOLAR.

" N. R. MELANCON.

Exception.

Filed October 9th, 1916.

29th Judicial District Court, Parish of St. Bernard, State of Louisiana.

No. 1051.

GODCHAUX Co., Inc.,

versus

ALBERT ESTOPINAL, JR., Sheriff.

Now, into court, comes Albert Estopinal, Jr., Sheriff and ex-Officio Tax Collector of the Parish of St. Bernard, Louisiana, made defendant herein, through his undersigned counsel, and for cause of exception to plaintiff's petition, with respect, shows:

That the same discloses no cause of action.

Wherefore, exceptor prays that this suit may be dismissed at plaintiff's cost, and for general relief.

(Signed)

WM. WINANS WALL, *Attorney.**Certificate.*

I hereby certify that the above and foregoing exception, being well-founded in law, is filed in good faith and not merely for the purpose of delay.

New Orleans, La., October 5th, 1916.

(Signed)

WM. WINANS WALL, *Attorney.**Answer.*

Filed October 9th, 1916.

29th Judicial District Court, Parish of St. Bernard, State of Louisiana.

No. 1051.

GODCHAUX Co., Inc.,

versus

ALBERT ESTOPINAL, JR., Sheriff.

Now, into court, comes Albert Estopinal, Jr., Sheriff and ex-Officio Tax Collector of St. Bernard Parish, Louisiana, made defendant herein, through his undersigned counsel, and, with full reservation of all of his rights under the exception heretofore filed, for answer to plaintiff's original petition, with respect, shows:

I.

Respondent admits the allegations of the first paragraph of plaintiff's original petition.

II.

Respondent admits the allegations of the second paragraph of plaintiff's original petition.

III.

As to the allegations of the third paragraph of plaintiff's original petition, respondent avers that said paragraph embodies only questions of law and deductions on the part of the plaintiff, which are denied.

IV.

As to the allegations of the fourth paragraph of plaintiff's original petition, respondent avers that said paragraph embodies only questions of law and deductions on the part of the plaintiff, which are denied.

V.

As to the allegations of the fifth paragraph of plaintiff's original petition, respondent denies that the tax is invalid, and admits all the other allegations of said paragraph five.

VI.

As to the allegations of the sixth paragraph of plaintiff's original petition, respondent denies that plaintiff has paid all taxes
18 that are legally collectible against the said Property. Respondent admits that it has tendered 16¢ per acre upon the land which is susceptible of gravity drainage, and also admits all the other allegations of said paragraph six.

VII.

As to the allegations of the seventh paragraph of plaintiff's original petition, respondent avers that said paragraph embodies only conclusions and deductions by the plaintiff, which are denied.

VIII.

Respondent, for answer to the supplemental and amended petition filed by plaintiff, with respect, shows:

For answer to paragraph one, this respondent states that this paragraph has already been fully answered above.

IX.

For answer to paragraph two, this respondent denies all the allegations of said paragraph.

X.

For answer to paragraph three, this respondent admits all the allegations of said paragraph.

XI.

Further answering, respondent avers:

That on the 15th day of December, 1906, while the provisions of Act 159 of the Regular Session of the General Assembly of the State of Louisiana were in force, the Police Jury of St. Bernard Parish created the Bayou Terre-aux-Boeufs Drainage District, legally and politically, and delimited territorially said Drainage District, and the Board of Drainage Commissioners was organized and assumed jurisdiction of all of its affairs and of all the lands within its boundaries.

XII.

That on the 16th of April, 1907, the Board of Drainage Commissioners submitted to the property tax payers of the Bayou Terre-aux-Boeufs Drainage District a proposition to levy a five mills on the dollar ad valorem tax on all property and a special annual acreage tax of three cents per acre on all land within the limits of the Bayou Terre-aux-Boeufs Drainage District, and to fund both taxes
19 into an issue of \$100,000.00 of bonds, to be voted on at an election held under Act 145 of the Regular Session of the General Assembly of the State of Louisiana for the year 1902, and the proposition was duly carried and the result declared and promulgated, by publication, as required by law.

XIII.

That, immediately after the election, Charles Esteves filed a suit in this Honorable Court, attacking the organization of the said Bayou Terre-aux-Boeufs Drainage District, and assailing the validity of the tax, and asked that the levy and collection of the tax be perpetually enjoined:

The organization of the said Bayou Terre-aux-Boeufs Drainage District was attacked on the ground that a large part of the property included in the said Bayou Terre-aux-Boeufs Drainage District is not susceptible of drainage; the validity of the tax was assailed for the reason that the election, at which its levy and the issuance of the bonds was authorized, was held by the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District, instead of under the auspices of the Police Jury. This case was decided

against the plaintiff by this Honorable Court, which holds its sessions within the limits of the said Bayou Terre-aux-Boeufs Drainage District. An appeal was taken to the Supreme Court of Louisiana, and that Court dismissed the attack on the organization of the said Bayou Terre-aux-Boeufs Drainage District; but held the tax to be null, for the reason urged by the plaintiff. *Esteves v. Board of Comrs. for Bayou Terre-aux-Boeufs Drainage Dist., et al.*, 121 La., 991. (This case was decided June 22, 1908.)

XIV.

That in July, 1908, the said Bayou Terre-aux-Boeufs Drainage District was re-organized, and on July 5 and 6, 1908, to comply with the Supreme Court's interpretation of the law, the Police Jury passed an ordinance to submit the same proposition to the property tax payers of the said Bayou Terre-aux-Boeufs Drainage District, at an election to be held on August 15, 1908. The proposition was duly carried, and the result of the election promulgated, by publication, in the official journal of the Parish.

20

XV.

That, a short time after the promulgation of the result of the election, the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District brought suit against Earl R. Baker in this Honorable Court, to compel the specific performance of a contract to buy 180 of the bonds of the par value of \$1,000.00 each. This suit was defended on the following grounds:

(1) That the election should have been held by the Police Jury.

(2) That the amount of the bonds issued exceeded one-tenth of the assessed valuation of the property in the said Bayou Terre-aux-Boeufs Drainage District, in violation of Art. 281 of the Constitution.

The judgment of that Court was for plaintiff. An appeal was taken to the Supreme Court of Louisiana, and the first ground of defense was maintained, while the second was pronounced to be without merit. *Board of Com'rs for Bayou Terre-aux-Boeufs Drainage Dist. v. Baker*, 123 La., 75. (This case was decided by the Supreme Court on March 1, 1909.)

XVI.

That on December 5, 1908, the Police Jury, by ordinance duly adopted, ordered the proposition again submitted to the property tax payers of the said Bayou Terre-aux-Boeufs Drainage District, at an election to be held on January 9, 1909, and again the proposition was carried and the tax voted at the election on August 15 was ratified and confirmed by the property tax payers of the said Bayou Terre-aux-Boeufs Drainage District, and the result of the election promulgated, by publication, in the official journal of the Parish.

XVII.

That on April 26, 1909, the Supreme Court of Louisiana decided the case of Board v. Board of Comrs. of Portage Drainage Dist. of Parish of Pointe Coupee, et al., (123 La., 590), in which it was held that the Boards of Drainage Commissioners of the Different Drainage Districts were the governing bodies of those Districts and that all elections, regulating taxation in the Drainage Districts, should be held by them and not by the Police Juries. In that case, all the decisions holding the contrary were overruled.

21

XVIII.

That the Board of Drainage Commissioners then called an election to be held on June 14, 1909, by the property tax payers of the Bayou Terre-aux-Bœufs Drainage District, to ratify and confirm the indebtedness, the bonds and the tax, and at that election the indebtedness, the bonds and the tax were ratified and confirmed, and the result of the election promulgated, by publication, in the official journal of the Parish.

XIX.

That, at a meeting of the Board of Drainage Commissioners, held on June 16, 1909, resolutions were passed levying the special annual acreage tax of three cents per acre on all lands in the Bayou Terre-aux-Bœufs Drainage District, and funding the same into an issue of \$60,000.00 of negotiable bonds, and levying the ad valorem tax of five mills on the dollar on all property in the said Bayou Terre-aux-Bœufs Drainage District, and funding the same into an issue of \$40,000.00 of negotiable bonds.

XX.

That a suit was then brought by the Board of Drainage Commissioners against Earl R. Baker for specific performance of his contract to buy the issue of bonds into which said tax had been funded in this Honorable Court, and this Honorable Court and the Supreme Court both pronounced the bonds valid. Board of Com'rs for Bayou Terre-aux-Bœufs Drainage Dist. v. Baker, 124 La., 216. (This case was decided June 23, 1909.)

XXI.

That the annual acreage tax of three cents per acre was paid by all the land owners within the Bayou Terre-aux-Bœufs Drainage District for the year 1909.

XXII.

That on November 20, 1909, the Board of Drainage Commissioners of the Bayou Terre-aux-Bœufs Drainage District called an

election of the property owners of the said Bayou Terre-aux-Bœufs Drainage District to vote on the following propositions:

"1. To vote a tax of six (6) cents per acre on every acre of land in this District, beginning with the year 1910, and for each year thereafter, for (40) years, in accordance with Art. 281 of the Constitution of the State of Louisiana, and the Acts of the General Assembly of this State to carry the same into effect.

"2. To authorize the Board of Commissioners of the Bayou Terre-aux-Bœufs Drainage District to incur an indebtedness to the extent of One Hundred Sixty-five Thousand Dollars (\$165,000.00), and to further authorize the said Board of Commissioners of the Bayou Terre-aux-Bœufs Drainage District to capitalize the tax hereinabove provided for in proposition No. 1, and to issue one hundred and sixty-five (165) negotiable bonds of One Thousand Dollars (\$1,000.00) each, aggregating One Hundred Sixty-five Thousand Dollars (\$165,000.00), in conformity with Art. 281 of the Constitution of the State of Louisiana, and the laws of the State, said bonds to be secured by the tax of six cents (6¢) per acre hereinabove provided, for the principal and interest, until paid. The said bonds to be payable in forty (40) years from February 1, 1910, redeemable at the option of the Board of Commissioners of the Bayou Terre-aux-Bœufs Drainage District after ten (10) years from their date, to bear five per cent. (5%) per annum interest from their date, until paid, payable annually. And which said bonds the Board of Commissioners of the Bayou Terre-aux-Bœufs Drainage District is authorized to sell at par, and to devote the proceeds of said sale to the completion of the drainage work in said District.

"3. To cancel and annul, after January 1, 1910, the ad valorem tax of five mills on the dollar on all the assessable property in said District, voted and levied at an election held on August 15, 1908, and ratified at the elections held in this District on January 9, 1909, and June 14, 1909, and said Board of Commissioners for said Drainage District is specifically instructed not to enforce the collection of said tax from and after January 1, 1910.

"4. To cancel and rescind the bond issue of Forty Thousand Dollars (\$40,000.00), voted and authorized in this Drainage District by the property holders qualified to vote at the election held January 9, 1909, and ratified at another election held in this Drainage District on June 14, 1909, and which said bond issue of Forty Thousand Dollars (\$40,000.00) was secured by a tax of five mills on all the assessable property in this District, voted and levied at an election held on August 15, 1908, and ratified at elections held in this District on January 9, 1909, and June 14, 1909."

That on December 30, 1909, the Board of Drainage Commissioners met, canvassed the returns of the election, declared that all four propositions had carried, ordered the result promulgated, levied the tax and ordered the bonds issued and sold. And the bonds were all thereafter sold.

XXIV.

That on July 7, 1910, at the regular session of that year, the General Assembly of the State of Louisiana passed Act 317 of 1910. This act went into effect twenty days after its promulgation. This act was a re-enactment and amendment of Act 159 of 1902; but all Drainage Districts organized prior to its passage were, by Section 18, excluded from its effect. The powers of the Boards of Commissioners of Drainage Districts organized under it, were not altered with respect to taxes authorized by Art. 281 of the Constitution to be levied by a vote of the property owners; but they were enlarged, with respect to a tax that was authorized by the amendment to Art. 281 of the Constitution, adopted at the November election, to levy an acreage tax for drainage on the petition of property owners within the District.

XXV.

That, for the purpose of bringing it under the provisions of Act 317 of 1910, on December 3, 1910, the Bayou Terre-aux-Boeufs Drainage District was re-organized, with the same boundaries, and assumed all the assets, obligations and duties of the said Bayou Terre-aux-Boeufs Drainage District as formerly constituted.

XXVI.

That, on the same day, the Board of Drainage Commissioners called an election to submit to the property tax payers, the following propositions:

"First. To vote to authorize the levy and assessment of an annual contribution or acreage tax of 16¢ per acre on every acre of land within the Bayou Terre-aux-Boeufs Drainage District, which levy shall begin with the year 1911, and continue for a total period of forty (40) years consecutively, being the years 1911 to 1950, both inclusive, for the purpose of providing and maintaining an adequate drainage system for said District, in accordance with the provisions of Art. 281 of the Constitution of the State of Louisiana, as amended and adopted in 1910.

"Second. To authorize the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to incur an indebtedness of said District of \$500,000.00, and to be evidenced by 500 negotiable bonds of the District of \$1,000.00 each, in conformity with the provisions of Art. 281 of the Constitution and laws of this State. Said bonds to be secured by and payable out of the annual contribution or acreage tax of 16¢ per acre to be levied, as above provided. Said bonds to mature within forty years after their date, to contain such provisions for their prior redemption at such times and in such amounts as the Board of Commissioners may, by resolution, determine, bearing interest at 5% per annum from their date, payable semi-annually on the first day of August and of February of each year, commencing

with the first day of February, 1912, and the proceeds of the sale of said bonds shall be devoted to the accomplishment of the drainage work of said District."

XXVII.

That on January 12, 1911, the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District met, canvassed the returns of the election, declared both propositions had carried, levied the tax and ordered the result of the election promulgated, by publication, in the official journal, and authorized the bonds to be issued. Twenty of the bonds were sold to George H. Randolph, and he refused to pay for them, and suit was filed in the Civil District Court to compel him to do so. The grounds of his refusal were:

First. That the limiting of said rate of taxation to 16 cents per acre per annum is in violation of Art. 281 of the Constitution, which allows a rate of 50 cents.

Second. That the denomination of the said bonds has not been fixed in such a way that the yearly payments in capital and interest shall be as nearly equal as practicable, as is required by Sec. 28 of Act 256, p. 426, of 1910.

Third. That the full amount of said 16 cents tax was levied at once for the entire period of 40 years; whereas, Art. 281 of the Constitution, as amended by Act 197 of 1910, adopted at the November election, 1910, and Secs. 27 and 29 of Act 256, p. 426, of 1910, require that the levy be made annually, and only in an amount sufficient to meet the payments of the bonds in capital and interest as they become due.

Fourth. That in submitting to a vote of the property tax payers of the District, the proposition to issue said \$500,000.00 of bonds, and to levy said 16¢ tax, the plaintiff district did not, at the same time, submit the proposition to ratify the previous issues of bonds, as is required by Sec. 17 of said Act No. 317 of 1910, to be done.

The judgment of the Civil District Court was for defendant. An appeal was taken by the plaintiff to the Supreme Court of Louisiana, and that court maintained the third and fourth objections, and affirmed the judgment of the trial court. Board of Comrs. for the Bayou Terre-aux-Boeufs Drainage Dist. v. Randolph, 131 La., 244. (This case was decided June 28, 1912.)

XXVIII.

That the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District then called an election for August 26, 1912, and re-submitted the two propositions, together with propositions to ratify and approve the two previous bond issues.

XXIX.

That on August 28, 1912, the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District met, canvassed the

returns of the election, found that all propositions had carried, ordered the result promulgated, by publication, in the official journal, levied the tax of 1912, and authorized the 500 bonds to be issued.

XXX.

That during the years 1907 to 1909, there were five elections held, at which a majority in number and amount of property tax payers voted on the propositions to levy the three (3) cents and six (6) cents annual acreage taxes throughout the Bayou Terre-aux-Boeufs Drainage District. The elections were given the utmost publicity, because they were held under the provisions of Act 145 of the Regular Session of the General Assembly of the State of Louisiana for

the year 1902, and Sec. 2 of that act provides for full notice:
 26 "Sec. 2. Be it further enacted, etc., That the notices of election called for the submission of any proposition named in Section 1 of this act, petitioned for or ordered as aforesaid, shall be published for thirty days in the official journal of the municipality or parish, and where there is no official journal in a newspaper published therein or where no newspaper is published in the parish, then by posting in three conspicuous places in the parish, municipality or drainage district, such notices to set forth in detail the purpose or purposes for which the debt is to be incurred, the bonds to be issued or the taxes levied, the amount of said bonds, and said debt, the rate of interest the said bonds are to bear, the time from which they are to run, the rate of taxation and the number of years said tax is to be levied. Said notice shall further state that the authorities ordering said election will, in open session, to be held on the day, hour and place named in said notice, proceed to open the ballot boxes, examine and count the ballots in number and amount, examine and canvass the returns and declare the result of the election."

XXXI.

That two elections were held in the years 1911 and 1912, the first to vote the annual acreage tax of sixteen (16) cents per acre, and to fund the same into \$500,000.00 of bonds; the second to vote the said tax and said bonds, and also to ratify and confirm the two previous tax levies and bond issues. These elections were held under Act 256 of the Regular Session of the General Assembly of the State of Louisiana for the year 1910, and Section 3 of that act provides for the same sort of notice as does the similar act of 1902.

XXXII.

That the said Bayou Terre-aux-Boeufs Drainage District was fully organized, and special acreage taxes assessed on the lands therein for the drainage system prior to the purchase of said lands by the plaintiff, and plaintiff and its authors in title have paid, without protest or objection, all taxes levied in said Drainage District since

its organization, and, on one occasion, permitted said property to be sold for the taxes of one year and redeemed same from said tax sale within the period allowed by law for redemption; that by reason of all the facts hereinbefore set forth, and the failure of
27 plaintiff to attack any of the proceedings by which said special taxes were levied and said bonds issued, by the express approval of said tax by plaintiff by paying the same, and by the recognition of the validity of the tax sale heretofore made for said special acreage taxes to Xeter Realty, Ltd., the plaintiff is estopped from denying the regularity, validity or constitutionality of said special acreage taxes, which estoppel is now specially pleaded in bar of this suit, and for all other purposes.

XXXIII.

That in the absence of fraud or palpable abuse in the creation of a taxing district and the levy of special taxes or forced contributions in aid of the construction of the drainage system approved by property owners of the District, in accordance with law, and duly authorized by the Board of Drainage Commissioners, the finding or prophecy of benefits by the legislative department is not subject to review by the judicial department of the State.

XXXIV.

That an honest mistake of judgment on the part of the legislative department of the state constitutes no ground for annulling a tax to pay for a public improvement.

XXXV.

That the special acreage taxes or forced contributions levied against said property by the Bayou Terre-aux-Boeufs Drainage District are entirely valid and not subject to attack by the plaintiff; that all the requirements of law were complied with by the Tax Collector.

XXXVI.

That this Court is without jurisdiction *ratione materiae* to entertain this suit, because an attack on said special acreage taxes or forced contributions levied by the property owners and Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District is an attack on said bonds, and the jurisdiction to entertain any such contest, where bonds had been issued, under Art. 281 of the Constitution, where such bonds had not been declared invalid by a judgment of a court of last resort in the State of Louisiana, and more than sixty days had elapsed since the promulgation
28 of the proceedings evidencing the issuing of said bonds, was withdrawn from all the courts of the State of Louisiana, and such bonds declared to be valid and existing bonds or obligations by the amendment to Art. 281 of the Constitution adopted in 1914.

Therefore, for this Court or any other court of the State of Louisiana to try this case and annul said special acreage taxes or forced contributions levied by the Bayou Terre-aux-Boeufs Drainage District would destroy said bond issues and deprive the holders of said bonds of their property without due process of law, in violation of the Fourteenth Amendment of the Federal Constitution.

Wherefore, respondent prays that this suit may be dismissed at plaintiff's cost, and that defendant have judgment, over and against plaintiff, maintaining the validity of said special acreage taxes or forced contributions levied against plaintiff's property by the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District.

And for all costs and general relief.

(Signed)

WM. WINANS WALL, *Attorney.*

Affidavit.

Before me, the undersigned authority, personally came and appeared, Wm. Winans Wall, who being first by me duly sworn, deposes and says: that he is the Attorney-at-law for Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, Louisiana, the respondent in the above and foregoing answer, and that all the facts and allegations therein contained are true and correct.

(Signed)

WM. WINANS WALL.

Subscribed and sworn to before me at New Orleans, La., this 5th day of October, 1916.

(Signed)

CHARLES SCHNEIDAU,
Notary Public.

29

Motion to Fix Case.

Filed November 23rd, 1916.

29th Judicial District Court, Parish of St. Bernard.

No. 1051.

GODCHAUX COMPANY, Incorporated,

v.

ALBERT ESTOPINAL, JR., Sheriff, et al.

Upon motion of Foster, Milling, Saal & Milling, Attorneys for the plaintiff herein, and upon suggesting to the Court that the above cause is an injunction suit which has been pending in this Court for some time, and as such is a preference case; and upon further suggesting to the Court that they desire to try said case and wishes the Court to fix same for trial for some early date; therefore,

It is Ordered that this cause be and is hereby fixed for trial for Tuesday the 28 day of Nov. 1916, in the Parish of St. Bernard, and that the Clerk of Court is ordered to notify counsel for the defendants of the fixing of such cause.

Ordered and signed on this the 23 day of November, 1916.

(Signed) R. EMMET HINGLE, *Judge*.

Service accepted.

(Signed) N. H. NUNEZ.

D. H.

WM. WINANS WALL, *Atty*.

30 *Answer of Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District.*

Filed November 28th, 1916.

29th Judicial District Court, Parish of St. Bernard, State of Louisiana.

No. 1051.

GODCHAUX COMPANY, Inc.,

vs.

ALBERT ESTOPINAL, Jr., Sheriff.

Now, into Court, comes the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, and for answer to plaintiff's petition, denies all and singular the allegations thereof, except such as may be hereinafter specially admitted; and, proceeding to answer articulately the paragraphs of plaintiff's petitions, respondent says:

I.

The allegations of paragraph I of the original petition are admitted.

II.

The allegations of paragraph II of the original petition are admitted.

III.

As to the allegations of paragraph III of the original petition, respondent avers that the said paragraph embodies only questions of law and deductions on the part of the plaintiff, which are denied.

IV.

As to the allegations of paragraph IV of the original petition respondent avers that the said paragraph embodies only questions of law and deductions on the part of the plaintiff, which are denied.

V.

As to the allegations of paragraph V of plaintiff's original petition, respondent denies that the tax is invalid, and admits all the other allegations of the said paragraph V.

VI.

As to the allegations of paragraph VI of plaintiff's original petition, respondent denies that plaintiff has paid all taxes that are legally collectable against the said property. Respondent admits that plaintiff has tendered 16¢ per acre upon the land which was susceptible of gravity drainage, and also admits all the other allegations of said paragraph VI.

31

VII.

As to the allegations of paragraph VII of plaintiff's original petition respondent avers that said paragraph embodies only conclusions and deductions by the plaintiff, which are denied.

VIII.

All of the allegations of paragraph I of the first supplemental and amended petition have already been fully answered.

IX.

All of the allegations of paragraph II of the first supplemental and amended petition are denied.

X.

The allegations of paragraph III of the first supplemental and amended petition are admitted.

XI.

The allegations of paragraph I of the second supplemental and amended petition are admitted.

XII.

The allegations of paragraph II of the second supplemental and amended petition are denied, for lack of information.

XIII.

The allegations of paragraph III of the second supplemental and amended petition are denied, for lack of information.

XIV.

Further answering, respondent avers that the plaintiff in this case, and its ancestors in title, either actively participated in or else stood by and acquiesced in the formation of the Drainage District, the voting of the respective taxes, to-wit, the three cent tax, the six cent tax, and the sixteen cent tax; stood by and acquiesced in the funding of said taxes into bonds, and the selling of the said bonds to bona fide holders for value, and that thereafter they proceeded, for several years, to pay the taxes in question without protest, and that only after the bond holders' money had been received by the Drainage District did they make any protest or contest; that by their said action consisting of acquiescence and laches, they have forever estopped themselves from contesting the validity of the Drainage District, the taxes, or the bonds into which said taxes have been funded.

32 Further answering, respondent avers:

XV.

That on the 15th day of December, 1906, while the provisions of Act 159 of the Regular Session of the General Assembly of the State of Louisiana of 1906 were in force, the Police Jury of St. Bernard Parish created the Bayou Terre-Aux-Boeufs Drainage District, legally and politically, and delimited territorially said Drainage District and the Board of Drainage Commissioners was organized and assumed jurisdiction of all of its affairs and of all of the lands within its boundaries.

XVI.

That on the 16th of April, 1907, the Board of Drainage Commissioners submitted to the property tax payers of the Bayou Terre-aux-Boeufs Drainage District a proposition to levy a five mills on the dollar ad valorem tax on all property and a special annual acreage tax of three cents per acre on all land within the limits of the Bayou Terre-aux-Boeufs Drainage District, and to fund both taxes into an issue of \$100,000.00 of bonds, to be voted on at an election held under Act 145 of the Regular Session of the General Assembly of the State of Louisiana for the year 1902, and the proposition was duly carried and the result declared and promulgated, by publication, as required by law.

XVII.

That, immediately after the election, Charles Esteves filed a suit in this Honorable Court, attacking the organization of the said

Bayou Terre-aux-Boeufs Drainage District, and assailing the validity of the tax, and asked that the levy and collection of the tax be perpetually enjoined:

The organization of the said Bayou Terre-aux-Boeufs Drainage District was attacked on the ground that a large part of the property included in the said Bayou Terre-aux-Boeufs Drainage District is not susceptible of drainage; the validity of the tax was assailed for the reason that the election, at which its levy and the issuance of the bonds was authorized, was held by the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District, instead of under the auspices of the Police Jury. This case was decided against the plaintiff by this Honorable Court, which holds its sessions within the limits of the said Bayou Terre-aux-Boeufs Drainage District.

33 An appeal was taken to the Supreme Court of Louisiana, and that Court dismissed the attack on the organization of the said Bayou Terre-aux-Boeufs Drainage District; but held the tax to be null, for the reason urged by the plaintiff, *Esteves v. Board of Com'rs for Bayou Terre-aux-Boeufs Drainage Dist. et als.*, 121 La., 991 (This case was decided June 22, 1908).

XVIII.

That in July 1908, the said Bayou Terre-aux-Boeufs Drainage District was recognized, and on July 5 and 6, 1908, to comply with the Supreme Court's interpretation of the law, the Police Jury passed an ordinance to submit the same proposition to the property tax payers of the said Bayou Terre-aux-Boeufs Drainage District, at an election to be held on August 15th, 1908.

XIX.

That on August 15th, 1908, an election was held in said Drainage District, in strict accordance with law, and whereat the requisite majority in number and amount of the property tax payers of said District, qualified to vote as electors under the laws of this State, voting at an election held for that purpose, voted to levy and assess annual contributions, an acreage tax, of three cents per acre, on each acre of land situated within said District, for the purpose of providing and maintaining a drainage system in said District, and to fund same into bonds aggregating Sixty Thousand Dollars, (\$60,000.00) face value running, bearing interest, and conditioned as required by law, which bonds should be refunded from and secured by the pledge and dedication of said acreage tax of three cents (3¢) per acre for a period of not to exceed forty (40) years, upon every acre of land situated in the said district.

XX.

That a short time after the promulgation of the result of the election, the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District brought suit against Earl R. Baker in this

Honorable Court, to compel the specific performance of a contract to buy 180 of the bonds of the par value of \$1,000.00 each. This suit was defended on the following grounds:

(1) That the election should have been held by the Police Jury.

34 (2) That the amount of the bonds issued exceeded one-tenth of the assessed valuation of the property in the said Bayou Terre-aux-Boeufs Drainage District, in violation of Art. 281 of the Constitution.

The judgment of that Court was for plaintiff. An Appeal was taken to the Supreme Court of Louisiana, and the first ground of defense was maintained, while the second was pronounced to be without merit. Board of Com'rs for Bayou Terre-aux-Boeufs Drainage Dist. v. Baker, 123 La., 75. (This case was decided by the Supreme Court on March 1, 1909.)

XXI.

That said election was held in strict accordance with law and after the observance of all proper legal formalities.

XXII.

That, thereafter, at an election held January 9th, 1909, after full and due compliance with all the formalities required by law, the bonds authorized to be issued, the tax pledged to secure said bonds, and the levying of said tax, and all of the proceedings had on August 15th, 1908, and pursuant thereto, were fully ratified, approved and confirmed by the vote of a majority in number and amount of the property tax payers of said District qualified to vote as electors under the laws of this State, voting at an election held for that purpose.

XXIII.

That on April 26th, 1909, the Supreme Court of Louisiana decided the case of Board v. Board of Com'rs, of Portage Drainage Dist., of Parish of Pointe Coupee, et al., (123 La., 590) in which it was held that the Board of Drainage Commissioners of the different Drainage Districts were the governing bodies of those Districts, and that all elections, regulating taxation in the Drainage District, should be held by them and not by the Police Juries. In that case, all the decisions holding the contrary were overruled.

XXIV.

That, thereafter, at an election held on June 14th, 1909, after full and due compliance with all the formalities required by law, the bonds authorized to be issued, the tax pledged to secure said bonds, and the levying of said tax, and all of the proceedings had on August 15th, 1908, and pursuant thereto were fully ratified, approved and confirmed by the vote of the majority in number and amount of the

property tax payers of said District qualified to vote as electors under the laws of this State, voting at an election held for that
35 purpose. That the results of said election was duly promulgated in the official journal of the Parish.

XXV.

That, thereafter, the question of the validity of the said Sixty Thousand Dollars (\$60,000.00) par value of bonds and the legality of the pledge and dedication to secure same, of the tax of three cents (3¢) per acre per annum for forty (40) years, and the right of the Board of Commissioners of said Drainage District to levy a tax of three cents per annum upon each acre of land in said District, and the legality and constitutionality of said tax, and of its funding into said bonds, was presented to the property constituted judicial tribunal having jurisdiction of said questions, and after due trial, was appealed to the Supreme Court of the State of Louisiana, which tribunal stated the issues presented to it in this language.

"There is no dispute and no ground of dispute as to the facts. The demand of plaintiff is clearly stated, and the defense is set forth in the answer with some particularity.

Whether a tax of five mills on all assessable property in the plaintiff district, and another tax of three cents per acre on every acre of land, within its limits shall be levied for forty years, beginning with 1908, for the purpose of draining the district, have been legally imposed in the question.

The proposition was submitted to the property tax payers and an election was held on August 13th, 1909."

And the said tribunal thereupon proceeded to answer the question thus propounded by itself in the affirmative, and to affirm the judgment of this Honorable Court which had upheld the validity of the said three cents acreage tax, and the right of the Commissioners to levy the said three cents acreage tax on every acre of land within the limits of the District for forty years, beginning with 1908, and the validity, legality and constitutionality of the bonds into which the said tax had been founded and by the dedication and pledge of which they were secured.

XXVI.

That the said decision was handed down in the Supreme Court of Louisiana on June 23rd, 1909, and is reported in the 124th, Louisiana reported on Page 216.

XXVII.

That the annual acreage tax of three cents per acre was paid by all the land owners in the Bayou Terre-aux-Boeufs Drainage District for the year 1909, and subsequent years, down to 1915.

XXVIII.

That, thereafter, to-wit: in the month of December, 1909, respondent sold, and bona fide purchasers in good faith purchased, the entire issue of Sixty Thousand Dollars (\$60,000.00) par value of bonds of the aforesaid Bayou Terre-aux-Bœufs Drainage District for cash. That in so doing, your respondent and the said bona fide purchasers acted upon the faith of the decision and declared purpose of respondent to utilize the proceeds of said bonds for the purpose of draining the lands within the said District, and upon the faith of the ratification of that declared purpose and decision by the property tax payers within the said district, as evidenced by the repeated elections above described and upon the faith of the decision of the Supreme Court of the State of Louisiana, above referred to, wherein that tribunal held that the tax of three cents per acre upon every acre of land within said District, for a period of forty years, beginning with 1908, had been legally imposed, and that said taxes were validly pledged to secure, and funded into the bonds which respondent sold, and the said bona fide purchasers purchased, and upon the belief that the bonds themselves were legal, valid, and constitutional obligations.

XXIX.

That the proceeds at par of said bonds were duly received by the duly and legally constituted Board of Commissioners of the Bayou Terre-aux-Bœufs Drainage District, and that the said bonds amounted to less than ten per cent of the assessed valuation of the property in the said subdivision or drainage District; that the purchasers thereof, as the holders of said bonds, acquired a contract right and a vested right to the imposition upon every acre of land in the Bayou Terre-aux-Bœufs Drainage District for a period of forty years, beginning with 1908, of the tax referred to, and that the construction placed upon the election and the statutes and articles of the Constitution of the State of Louisiana and other proceedings had at that time, by the State Supreme Court of Louisiana, holding that the said three cents acreage tax for the said forty year period, beginning with 1908, had been legally imposed, and that said tax had been legally funded into, and pledged to secure bonds which were legally and constitutionally secured by the pledge and dedication of said three cents tax, became part of the said purchasers' contract and vested right, and that it thereafter became impossible to deprive the said purchasers of their said contract rights, or to change the said judicial construction without a divestiture of the said purchasers' vested rights and an impairment of the obligations of the contract, and a deprivation of the said purchasers and of this respondent of its property without due process of law, in violation of Articles 2 and 166 of the Constitution of the State of Louisiana, and of Amendment Fourteen and Article 1, Section Ten, Paragraph One, of the Constitution of the United States; and respondent specially pleads the said Articles in defense of the present proceeding.

XXX.

That on November 20th, 1909, respondent called an election of the property holders of the said Bayou Terre-aux-Boeufs Drainage District, to vote on the following propositions:

(1) To vote a tax of six cents per acre on every acre of land in this District, beginning with the year 1910, and every year thereafter, for forty years, in accordance with Article 281 of the Constitution of the State of Louisiana, and the Acts of the General Assembly of this State, to carry the same into effect:

(2) To authorize the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to incur an indebtedness to the extent of One Hundred and Sixty-five Thousand Dollars (\$165,000.00), and to further authorize the said Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to capitalize the tax hereinabove provided for in proposition No. 1, and to issue one hundred and sixty-five (165) negotiable bonds of One Thousand Dollars (\$1,000.00) each, aggregating \$165,000.00, in conformity with Article 281 of the Constitution of the State of Louisiana and the laws of the State; said bonds to be secured by the tax of six per acre, hereinabove provided, for the principal and interest until paid; the said bonds to be payable in forty years from February 1st, 1910, redeemable at the option of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, after ten years from their date, to bear five per cent. per annum interest from their date until paid, payable annually, and which said bonds the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District is authorized to sell at par and to devote the proceeds of said sale to the completion of the drainage work in said district.

38 (3) To cancel and annul, after January 1st, 1910, the ad valorem tax of five mills on the dollar on all assessable property in said district, voted and levied at an election held on August 15th, 1908, and ratified at the election held in this district on January 9th, 1909, and June 14th, 1909, and said Board of Commissioners for said drainage district is specifically instructed to enforce the collection of said tax from and after January 1st, 1910.

(4) To cancel and rescind the bond issue of \$40,000.00, voted and authorized in this Drainage District by the property holders qualified to vote at the election held January 9th, 1909, and ratified at another election held in this Drainage District on June 14th, 1909, in which said bond issue of \$40,000.00 was secured by a tax of five mills on all the assessable property in this district on January 9th, 1909, and June 14th, 1909."

XXXI.

That on December 30th, 1909, the Board of Drainage Commissioners met, canvassed the returns of the election, declared that all four propositions had carried, ordered the result promulgated, levied the tax, and ordered the bonds issued and sold.

XXXII.

That the bonds thus provided for were sold by respondent to bona fide purchasers, for cash; that the cash was received by respondent, and that the respondent in selling said bonds, and the purchasers in purchasing same, acted upon the faith of the decision of the Supreme Court of Louisiana, upholding the validity of the creation of the Drainage District, and upon the statutes in force at that time, and upon the express intent of respondent to utilize the proceeds thereof for drainage purposes in said District, and that the said purchasers acquired contract rights and vested rights to the levy and assessment during the prescribed period of the six cent tax in question, which had been duly funded into and dedicated and pledged to secure the bonds thus purchased by them; that any change in the construction of the decisions of the Supreme Court of this State upholding the validity of the creation of the District, and deciding adversely questions of the legality and validity of the said bonds, would amount to a divestiture of vested rights, and an impairment of the obligation of the contract of the said bona fide purchasers; the whole in violation of Article- 2 and 166 of the Constitution of the State of Louisiana, and Amendment 14 and Article 1, Section 10, Paragraph 1, of the Constitution of the United States.

39

XXXIII.

That on July 7th, 1910, at the regular session of that year the General Assembly of the State of Louisiana passed Act No. 317 of 1910, which act went into effect twenty days after its promulgation. This act was a re-enactment and amendment of Act 159 of 1902; but all drainage districts organized prior to its passage were, by Section 18, excluded from its effects, the powers of the Board of Commissioners for the Drainage District organized under it were not altered with respect to taxes authorized by Article 281 of the Constitution to be levied by a vote of the property owners, but they were enlarged with respect to a tax that was authorized by the amendment to Article 281 of the Constitution, adopted at the November election, to levy an acreage tax for drainage on the petition of property owners within the district.

XXXIV.

That for the purpose of bringing it under the provisions of Act No. 317 of 1910, on December 3rd, 1910, the Bayou Terre-aux Boeufs Drainage District was re-organized with the same boundaries and assumed all the assets, obligations and duties of the said Bayou Terre-aux-Boeufs Drainage District as formerly constituted.

XXXV.

That on the same day the Board of Drainage Commissioners of the said District called an election to submit to the property tax payers the following propositions:

(1) To vote to authorize the levy and assessment of an annual contribution or acreage tax of sixteen cents per acre on every acre of land within the Bayou Terre-aux-Boeufs Drainage District, which levy shall begin with the year 1911 and continue for a total period of forty years consecutively, being the years 1911 to 1950, both inclusive, for the purpose of providing and maintaining an adequate drainage system for said district, in accordance with the provisions of Article 281 of the Constitution of the State of Louisiana, as amended and adopted in 1910;

(2) To authorize the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to incur an indebtedness of said district of Five Hundred Thousand Dollars (\$500,000.00), and to

40 — evidenced by five hundred (500) negotiable bonds of the District, of One Thousand Dollars (\$1,000.00) each, in conformity with the provisions of Article 281 of the Constitution and laws of this State; said bonds to be secured by and payable out of the annual contribution or acreage tax of sixteen cents per acre, to be levied as above provided; said bonds to mature within forty years after their date; to contain such provisions for their prior redemption at such times and in such amounts as the Board of Commissioners may, by resolution, determine, bearing interest at five per cent per annum from their date, payable semi-annually, on the first day of August and of February of each year, commencing the first day of February, 1912, and the proceeds of the sale of said bonds shall be devoted to the accomplishment of the drainage work of said district.

XXXVI.

That on January 12th, 1911, the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District met, canvassed the returns of the election, declared both propositions had carried, levied the tax, and ordered the result of the election promulgated by publication in the official journal, and authorized the bonds to be issued. Twenty of the bonds were sold to George H. Randolph, who refused to pay for them, and suit was filed in the Civil District Court, Parish of Orleans, to compel him to do so. The grounds of his refusal were:

(1) That the limit of said rate of taxation to sixteen cents per acre per annum is in violation of Article 281 of the Constitution, which allows a rate of fifty cents;

(2) That the denomination of the said bonds had not been fixed in such a way that the yearly payments in capital and interest shall be as nearly equal as practical, as is required by Section 28 of Act 256, page 426, of 1910;

(3) That the full amount of the said sixteen cent tax was levied at once, for the entire period of forty years, whereas article 281 of

the Constitution, as amended by Act 197 of 1910, adopted at the November election of 1910, and Sections 27 and 29 of Act No. 256, page 426, of 1910, required that the levy be made annually and only in an amount sufficient to meet the payment of the bonds, in capital and interest, as they become due;

(4) That in submitting to a vote of the property tax payers of the district the proportions to issue said Five Hundred Thousand Dollars (\$500,000.00) of bonds, and to levy said sixteen cent tax, plaintiff district did not, at the same time, submit the proposition to ratify the previous issues of bonds, as is required by Section Seventeen of said Act No. 317 of 1910, to be done.

The judgment of the Civil District Court was for defendant, and an appeal was taken by the plaintiff to the Supreme Court of Louisiana, and that court maintained the third and fourth objections, and affirmed the judgment of the trial Court (Board of Commissioners for the Bayou Terre-aux-Boeufs Drainage District vs. Randolph, 131 La., 244, decided June 28th, 1912).

41

XXXVII.

That respondent then called an election for August 26th, 1912, and re-submitted two propositions to the electors, in accordance with law, together with a proposition to ratify and approve the two previous bond issues.

XXXVIII.

That on August 28th, 1912, the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District met, canvassed the returns of said election, found that all the propositions had carried, and ordered the result promulgated by publication in the official journal, levied the tax for 1912, and authorized the five hundred (500) bonds to be issued.

XXXIX.

That during the year- 1907, to 1909, there were five elections held, at which a majority in number and amount of property tax payers voted on the propositions to levy the three cents and the six cent annual acreage taxes throughout the Bayou Terre-aux Boeufs Drainage District; the election- were given the utmost publicity, because held under the provisions of Act No. 145 of the regular session of the General Assembly of the State of Louisiana for the year 1902, Section 2 of which act provides as follows:

"Section 2. Be it further enacted, etc., that the notices of election, called for the submission of any propositions named in Section One of this act, petitioned for or ordered, as aforesaid, shall be published for thirty days in the official journal of the municipality or parish, and where there is no official journal, in a newspaper published therein, or where no newspaper is published in the parish, then by posting in three conspicuous places in the Parish, municipality or drainage district, such notices to set forth in detail the purpose of

purposes for which the debt is to be incurred, the bonds to be issued, or the taxes levied, the amount of said bonds and said debt, the rate of interest the said bonds are to bear, the time from which they are to run, the rate of taxation, and the number of years said tax is to be levied. Said notice shall further state that the authorities ordering said election will, in open session to be held on the day, hour and place named in said notice, proceed to open the ballot boxes, examine and count the ballots in number and amount, examine and canvass the return, and declare the result of the election."

42

• XL.

That two elections were held in the year- 1911 and 1912, the first to vote the annual acreage tax of sixteen cents an acre and to fund the same into Five Hundred Thousand Dollars (\$500,000.00) of bonds; the second to vote the said tax and said bonds, and also to ratify and confirm the two previous tax levies and bond issues. These elections were held under Act. No. 256 of the regular session of the General Assembly of the State of Louisiana for the year 1910, and Section 3 of that act provides for the same sort of notice as does the similar act of 1902.

XLI.

That for the reason of all the facts hereinbefore set forth, and the failure of the plaintiff to attack any of the proceedings by which said taxes — levied and said bonds issued, by the express approval of said tax by the plaintiff by paying same, the plaintiff is estopped from denying the regularity, validity or constitutionality of said special acreage taxes, which estoppel is now specially pleaded in bar of this suit and for all other purposes. In connection with said estoppel, respondent avers that to the knowledge of the plaintiff, the bonds into which the said taxes had been funded, were, during the period of plaintiff's acquiescence, placed upon the open market, and passed from hand to hand to bona fide purchasers.

XLII.

That in the absence of fraud or palpable abuse in the creation of a tax district and the levy of special taxes, or forced contributions in aid of the construction of the drainage system approved by property owners of the district, in accordance with law, and duly authorized by the Board of Drainage Commissioners, the finding of benefits by the Legislative Department is not subject to review by the Judicial Department of the State; that an honest mistake in judgment on the part of the Legislative Department of the State constitutes no ground for annulling a tax to pay for public improvements, particularly after the said tax has been funded into bonds, which bonds have passed into the hands of bona fide purchasers for value, without objection from the property tax payers.

XLIII.

43 That the special acreage tax or forced contributions levied against said property by the Bayou Terre-aux-Boeufs Drainage District are entirely valid and not subject to attack by the plaintiff; that all the requirements of law were complied with by the Tax Collector, prior to the sale of said property to Isaac C. Enochs.

XLIV.

That at the session of the Louisiana Legislature of 1912, an amendment to the Constitution of Louisiana was proposed, in accordance with law, being Joint Resolution No. 132 of 1912, which proposed amendment was adopted on or about November 6th, 1912, by the vote of the people of the State of Louisiana; that by said amendment to the Constitution of the State of Louisiana it was provided:

"Where bonds of any subdivision have been heretofore issued for any of the purposes specified in Paragraph 1 of this Article, and issue has been authorized by the vote of a majority in number and amount of property tax payers qualified to vote under the Constitution and laws of this State who voted upon the proposition to issue such bonds at an election held for that purpose and where such bonds have been issued and sold by such subdivision for not less than par value thereof, the said bonds or any refund issue bonds, or renewal or refunding bonds issued in novation or renewal of bonds issued for said purposes specified in paragraph 1 of Article 281 are hereby validated, ratified and confirmed; provided that such bonds did not at the time of their issue exceed ten per centum of the assessed valuation of the property in such subdivision, and such bonds are hereby ratified, approved and confirmed shall be deemed to be valid and incontestable obligations of such subdivision and a tax for the payment of the principal and interest thereof and to create a sinking fund for the redemption shall be levied and collected in the manner and within the limits prescribed by said paragraph 1 of this article. This entire article to be considered a full grant of power to the subdivisions of the State as set forth therein."

That hence this Court has no jurisdiction to entertain this attack upon the said bonds.

XLV.

44 That as appears from its phraseology, the said amendment to the Constitution of the State of Louisiana expressly ratified and approved (although such ratification and approval were unnecessary), the validity and binding force of the bonds theretofore issued by respondent, as hereinabove set forth, and expressly commanded the Bayou Terre-aux-Boeufs Drainage District and its Commissioners to levy a tax for the payment of the principal and interest upon the said bonds, and to create a sinking fund for the redemption of the same.

XLVI.

That in the year 1914, there was proposed by the Legislature, in accordance with law, and there was adopted by the people of the State of Louisiana, and additional amendment to the Constitution of the State of Louisiana, which amendment is to be found in Act No. 192 of the session of the Louisiana Legislature of 1914, which Act reads, in part, as follows:

"All bonds heretofore issued under and by virtue of this Article 281 of the Constitution by the governing authority of any subdivision, which have heretofore not been declared invalid by a judgment of a Court of last resort in the State of Louisiana, and more than sixty (60) days have elapsed since the promulgation of the proceedings evidencing the issuing of said bonds, are hereby recognized and declared to be valid and existing bonds and obligations of the district or sub-division issuing the same, and no court shall have jurisdiction to entertain any contest wherein their validity or constitutionality is questioned."

That hence this Court has no jurisdiction of these proceedings.

XLVII.

That thereby the validity and binding force of the bonds therefore issued was again fully ratified, approved and confirmed, although, as above stated, said ratification, approval and confirmation were unnecessary.

XLVIII.

That at the time of the holding of the elections under which the aforesaid bonds were issued, and by which the taxes securing the said bonds were voted and pledged and funded into said bonds, Article 281 of the Constitution of 1898, as amended by Act No. 122 of 1906, read, in part, as follows:

"Shall * * * have the further power and authority to levy and assess annual contributions or acreage taxes for the purposes of providing and maintaining drainage systems on all lands situated in such districts not exceeding twenty-five cents per acre, for a period not to exceed forty years when authorized to do so by a vote of a majority in number and amount of property tax payers of said districts qualified to vote as electors under the laws of this State, voting at an election held for that purpose, as provided in the first part of this Article, and said Drainage District through the Board of Commissioners thereof, may incur indebtedness and issue negotiable bonds therefor payable in principal and interest out of and not to exceed in principal and interest the aggregate amount to be raised by said annual contributions during the period for which the same are levied."

XLIX.

That the said article of the Constitution expressly gave to the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage

District the power to levy and assess annual contributions on all lands situated in said district, not exceeding twenty-five cents per acre per annum, for a period not to exceed forty years; and that, as above stated, the Supreme Court of this State affirmed the judgment of this tribunal, expressly holding that the said Board of Commissioners were authorized by law to levy a three cent acreage tax on every acre of land within its limits, for a period of forty years, beginning with 1908, and said law and said constructions of said law became a part of the vested and contract right of the purchasers of the bonds into which said tax was funded; and said construction of the right of the said Board of Commissioners to levy acreage taxes upon every acre of land within the said District became a part of the vested and contract rights of the purchasers of the bonds into which the six cent tax and the sixteen cent tax, respectively, were funded.

L.

That there was passed by the Legislature of Louisiana, Acts Nos. 317 of 1910, and 219 of 1912, but that if it be held that said acts, or either of them, deprived the said Board of Commissioners of their right to levy the said three cent tax and the said six cent tax, and the special sixteen cent tax for their respective periods, upon every acre of land within the said District, or upon any of said lands within the said — then that the said acts so construed, or either of them, is illegal, null and void, as divesting the vested rights and impairing the contract rights of the purchasers of the said bonds and of your respondent; the whole is derogation of Articles 2 and 166 of the Constitution of the State of Louisiana, and Amendment 46 14 and Article 1, Section 10, Paragraph 1 of the Constitution of the United States.

Wherefore, Respondent prays that this suit may be dismissed at the plaintiff's costs, and that defendant have judgment against the plaintiff maintaining the validity of the said special acreage taxes or forced contributions levied against plaintiff's property by the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District, and that an attorney's fees of ten per cent upon the amount of the taxes enjoined by the plaintiff be allowed, Respondent prays for costs and general relief.

(Signed)

N. H. NUNEZ, *Attorney.*

(Signed)

WM. WINANS WALL,

Of Counsel.

Affidavit.

Personally came and appeared before me, the undersigned authority, Adam Estopinal, President of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, who being first by me duly sworn, deposes and says; that he has read the above and foregoing answers, and that all the facts and allegations therein contained are true and correct.

Sworn to and subscribed before me this 28th day of November, 1916, at St. Bernard, La.

(Signed)

ADAM ESTOPINAL.

(Signed) JAS. D. ST. ALEXANDRE, *Clerk.*

- 47 *Assessment of the Godchaux Company, Inc., Offered in Evidence by Counsel for Plaintiff.*

Filed November 28th, 1916.

(Marked page 47.)

- 48 *Map Marked "D-1," Offered in Evidence by Counsel for Defendant.*

Filed November 28th, 1916.

(Here follows blue print marked p. 48.)

ASSESSMENT

Non-Residents.

No. Names of Taxable
Persons.

Godchaux Co.,
"Inco".

Post Office
Address.

New Orleans, La.

white

colored

Ward

*No. of
Acres*

4 4591

Total Assessment.

White Colored Parish Tax Poll Tax

ASSESSMENT ROLL FOR THE PARISH OF ST. BERNARD, 1915

| Ward | No. of Acres | Description of Lands, Lots Live animals, Machinery, Vehicles, Credits, Franchises, Building material and other property subject to taxation. | 1 | 2 | 3 | 11000 | 110.00 | |
|------|--------------|--|----------------------|--|-----------------------------|-------|--------|--|
| | | | Cash Value of lands. | Cash Value of lots, squares or parcels of ground, in incorporated or unincorporated cities, towns or villages. | Cash Value of improvements. | | | |
| 4 | 4591 | "CONTRARAS PLANTATION." A certain tract of land or Sugar Plantation lying on both sides of Bayou Terre aux Boeufs, about 81 miles from the Miss River, and about 18 miles from the city, and measuring 26 arpents 7 toises and one foot on both sides of said bayou by a depth of 40 arpents, on each side, together with all the rights, title and interest of the said vendor to a further depth on the left side of said Bayou, extending between parallel lines to Lake Borgne, and being bounded on both sides, by property formerly belonging to the Succession of Pierre Jorda or assigns, and on the lower line by the property of Martial Verrettor assigns. " 2nd SWAMP LANDS." A certain tract of land, described as the W2 and the W1/2 of the E1/2 of Section 14; the E1/2 of the S.E.1/4 of Sec. 21; all of sec. 22; the W1/2 of Sec. 23, the N.W.1/4 of Sec. 26, all of Sec. 27, and fractional E1/2 of E1/2 of Sec. 28; in T.S. 13, S.R. 14 East, in the S.E. Land District of Louisiana East of the Miss. River and containing (2850) acres (estimated) according to the official plan of the survey of said lands in the STATE LAND OFFICE. | 10,000 | | 1,000 | | | |

(Endorsed) No
Parish of
Certified copy of asses

ment.

| ed | Parish Tax | Poll Tax | State Tax | Confederate Veteran Tax | Good Road Tax | Acreage Tax. | District Levee Tax | Road & Bridge Tax | Special 3rd Rd. Dist. Tax. | Total Tax |
|--|------------|----------|-----------|-------------------------|---------------|--------------|--------------------|-------------------|----------------------------|-----------|
| | 110.00 | | 55.00 | 11.00 | 2.75 | 25.00 | 110.00 | 33.00 | | 346.75 |
| <p>State of Louisiana:- Parish of St. Bernard:- I do hereby certify the above and foregoing to be a true and correct extract from the Assessment Roll of the Parish of St. Bernard for the year 1915, which is on file and of record in the office of the clerk of the 29th Judicial District Court of Louisiana, for the parish of St. Bernard.</p> <p>Parish of St. Bernard, November 28th, 1916. (Signed) Jas D. St. Alexandre Clerk 29th Judicial Dist Court of La. Parish of St. Bernard.</p> <p>(Seal)</p> <p>(Endorsed) No. 1051 29th Judicial District Court Parish of St. Bernard. Godchaux Co. Inc. vs Albert Estopinal, Jr. Sheriff et als. Filed copy of assessment of Godchaux Co. Inc. Filed in Evidence November 28th, 1916. (signed) Jas. D. St. Alexandre, Clerk, Per L.</p> | | | | | | | | | | |

(Rec'd 432
Page 47)

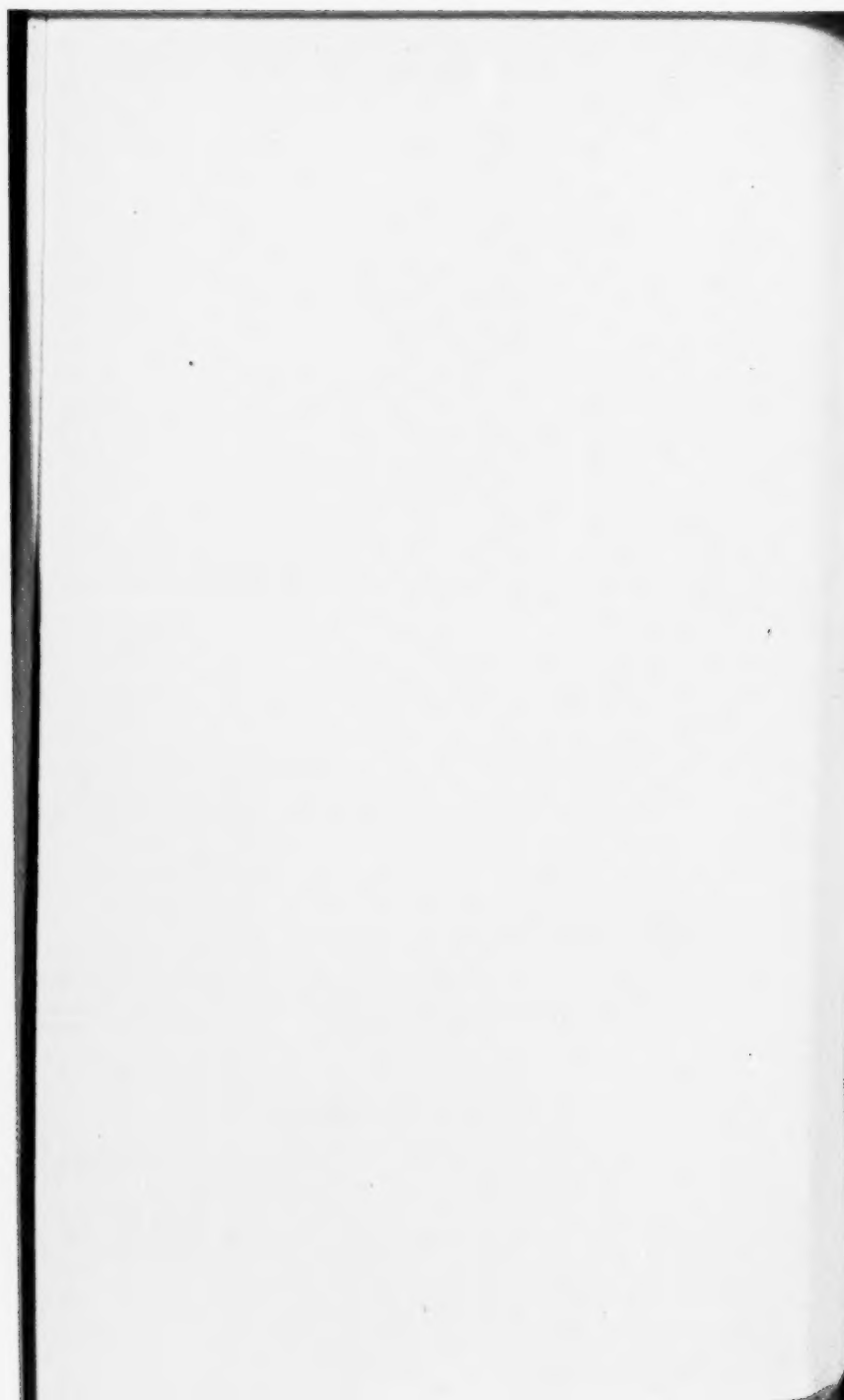
CHART

TOO

LARGE

FOR

FILMING



49 *Resolutions of Board of Drainage Commissioners of the Bayou Terre-Aux-Boeufs Drainage District, Dated St. Bernard, La., August 28th, 1912, Offered in Evidence by Counsel for Defendant.*

Filed November 28th, 1916.

St. Bernard, La., August 28, 1912.

Proceeds of the special meeting of the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District, held on August 28th, 1912.

The Board was called to order by the President, Adam Estopinal, Secretary B. F. Estopinal, at his desk. There were present also the following Commissioners, Estopinal Gutierrez, J. B. Puig and Frank Messa, Absent, C. Verret.

There having been no regular meeting on account of lack of quorum in the month of July, the minutes of the previous meeting were approved:

The following resolution was introduced by Mr. Gutierrez seconded by Mr. Puig,

Be resolved, That this Board proceed to open the ballot boxes and to count the votes at special election held in this district on the 26th day of August, 1912, and to declare the result of said election and that the President appoint two tellers to count the votes and complete the returns, thereof. Carried.

The President thereupon announced the appointment of Messrs. Puig and Gutierrez as tellers to open the ballot boxes and to count the votes cast at said election of August 26th, 1912, in the *the* presence of the members of the Board; thereupon the tellers and the members of the said Board proceeded to count the votes cast at said election and after examination of the ballot boxes and counting the ballots therein, and an examination of the ballots therein, and the tally sheets and list of voters and compilation made by the commissioners and Clerk of Election, of said ballots and being duly and fully advised in the premises, it was ascertained and determined by the Board that there were 63 votes representing an assessed valuation of twenty seven thousand nine hundred ninety one and 97/100 dollars (\$27,-991.97) cast in favor of proposition No. 1 namely:

1st. To authorize the Board of Commissioners of the Bayou Terre
aux Boeufs Drainage District to incur *as* indebtedness of five
50 hundred thousand dollars (\$500,000.00) to be evidenced by
five hundred (500) negotiable bonds, with interest bearing
coupons attached of one thousand dollars (\$1,000.00) each, in conformity with the provisional of Art. 281 of the Constitution and laws of this State, said bonds to be secured by and payable out of the annual contribution or acreage tax voted in this District at the election held on the 10th day of January, 1911, the said bonds to mature within forty years (40) after their date and to contain provisions for their prior redemption, at such times and in such amounts as the Board of Commissioners may, by resolution determine and said bonds

to bear five (5%) per cent per annum interest from their *sate*, payable semi-annually on the first day of Aug. and February of each year, commencing with the first day of February 1915, and the proceeds of the sale of which bonds shall be devoted to the accomplishment of drainage work in said district as in the opinion of said Board of Commissioners may be most desirable.

And that there were fourteen votes, representing an assessed valuation of fifty three hundred eighty three and 75/100 dollars, (\$5383.75) cast against proposition No. 1.

That there were sixty three votes representing an assessed valuation of twenty seven thousand nine hundred and ninety one and 97/100 dollars (\$27,991.97) cast in favor of proposition No. 2, namely:

2nd. To vote to confirm and approve the imposition and levy of an annual contribution or acreage tax of sixteen cents (16¢) per acre *vested* at the election held in this district on the 10th day of January, 1911, the said tax to run for a period not longer than forty years from the date of its imposition and the said tax to be founded into bonds in accordance with law, and there were fourteen votes, representing an assessed valuation of fifty three hundred eighty three and 75/100 dollars (\$5,383.75) cast against the said proposition No. 2.

That there were sixty three votes, representing an assessed valuation of twenty seven thousand nine hundred and ninety one and 97/100 Dollars (\$27,991.97) cast in favor of proposition No. 3 namely:

3rd. To vote to ratify and approve the bond issue of sixty thousand dollars (\$60,000.00) ratified at an election held on the fourteenth day of June, 1909.

51 and that there were fourteen votes, representing an assessed valuation of fifty three hundred eighty three and 75/100 Dollars (\$5,383.75) cast against said Proposition No. 3.

That there were sixty three votes, representing an assessed valuation of twenty seven thousand nine hundred ninety-one and 97/100 dollars (\$27,991.97) cash in favor of Proposition No. 4, namely:

4th. To vote to ratify and approve the bond issue of One Hundred and sixty five dollars (sic) (\$165,000.00) voted at an election held on the 26th day of December, 1909.

and that there were fourteen votes, representing an assessed valuation of fifty three hundred eighty three and 75/100 Dollars (\$5,383.75) cast against the said proposition No. 4.

And it having been ascertained that proposition No. 1 received a majority in number and amount of votes cast at said election, said proposition No. 1 is declared to be carried.

And the said proposition No. 2 having received a majority in number and amount of the votes cast at said election, was declared to be carried.

And the said proposition No. 3 having received a majority in number and amount of votes cast at said election was declared to be carried.

And the said proposition No. 4 having received a majority in number and amount of votes cast at said election and declared to be carried.

And this proces verbal and the canvass of the votes at said election held in this district on August 26th, 1912, having been duly written and read was thereupon signed by the tellers appointed by the President of the Board and by the President of the Board, its Secretary and each member thereof.

| | |
|----------|---|
| (Signed) | ALCIDE GUTIERREZ, |
| " | JOHN B. PUIG, |
| " | FRANK MESSA, |
| " | BEN. F. ESTOPINAL, <i>Secretary,</i> <i>Commissioners.</i> |

Tellers:

| | |
|----------|-------------------|
| (Signed) | ALCIDE GUTIERREZ. |
| " | JOHN B. PUIG. |

I, Adam Estopinal, President of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, do hereby announce and proclaim the result of the election held in this District on August 26th, 1912, ascertained by the canvass of the vote of said election by the Board of Commissioners of said Bayou Terre-aux-Boeufs Drainage District in session assembled on the 28th day of August, 1912, and the said canvass showed:

Sixty three votes, representing an assessed valuation of \$27,991.97 cast in favor of Proposition No. 1, to-wit:

1st. To authorize the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to incur an indebtedness of Five hundred thousand dollars (\$500,000.00) to be evidenced by five hundred (500) negotiable bonds, with interest bearing coupons attached of One thousand (\$1,000.00) each, in conformity with the provisions of Article 281 of the Constitution and laws of this State; said bonds to be secured by and payable out of the annual contribution or acreage tax voted in this district, at the election held on the 10th day of January, 1911, the said bonds to mature within forty (40) years after their date and to contain provisions for their prior redemption, at such times and in such amounts as the board of Commissioners may by resolution determine and said bonds to bear five per cent (5%) per annum interest from their date, payable semi-annually on the first day of August and February of each year, commencing with the first day of February, 1913, and the proceeds of the sale of which bonds shall be devoted to the accomplishment of drainage work in said district as in the opinion of said Board of Commissioners may be most desirable.

And that there were fourteen votes, representing an assessed valuation of \$5,583.75 cast against proposition No. 1, as above set forth; the said proposition having received a majority in number and amount of the votes cast was declared to be carried.

That there were 63 votes, representing an assessed valuation of \$27,991.97 cast in favor of proposition No. 2, to-wit:

2nd. To vote to confirm and approve the imposition and levy of an annual contribution or acreage tax of sixteen cents (16¢) per acre voted at the election held in this District on the 10th day of January, 1911, the said tax to run for a period not longer than forty (40) years from the date of its imposition, and the said tax to be funded into bonds in accordance with law.

And that there were fourteen votes, representing an assessed valuation of \$5,583.75 cast against said proposition No. 2 as
53 above set — the said proposition No. 2 having received a majority in number and amount of the votes cast was declared to be carried.

That there were 63 votes, representing an assessed valuation of \$27,991.97 cast in favor of proposition No. 3, to-wit:

3rd. To vote to ratify and approve the bond issue of sixty thousand dollars (\$60,000.00) ratified at an election held on the 14th day of June, 1909.

And there were 14 votes, representing an assessed valuation of \$5,383.75 cast against said Proposition No. 3, as above set forth the said Proposition No. 3 having received a majority in number and amount of the votes cast was declared to be carried.

That there were 63 votes, representing an assessed valuation of \$27,991.97 cast in favor of Proposition No. 4, to-wit:

4th. To vote to ratify and approve the bond issue of One hundred sixty five thousand dollars (\$165,000.00) voted at an election held on the 28th day of December, 1909.

And that there were fourteen votes, representing an assessed valuation of \$5,383.75 cast against Proposition No. 4 as above set forth and the said Proposition No. 4 having received a majority in number and amount of the votes was declared to be carried.

Therefore, in accordance with the resolution of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, passed at its meeting of August 28th, 1912, I hereby declare said Propositions Nos. 1, 2, 3, and 4 as heretofore set forth, to have been duly carried, this proclamation announcing the results of the votes thus cast.

Thus done and passed in the Parish of St. Bernard on this 28th day of August, 1912.

(Signed)

ADAM ESTOPINAL, *President.*

(Signed)

BEN F. ESTOPINAL, *Secretary.*

The President thereupon again called the Board to order for business; on motion of Commissioners Gutierrez, second- by Commissioner Messa, the following resolution was unanimously carried:

54 Be it resolved, That the President of this Board is authorized to issue its proclamation announcing and promulgating the results of the election held in this District on August 26th, 1912, as to each of the above propositions and that said proclamation be

duly published in accordance with law, in the official journal of the Parish of St. Bernard. Carried.

Motion by Commissioner Puig, seconded by Commissioner Messa, the following resolution was unanimously carried:

Whereas, the voters of the Bayou Terre-aux-Boeufs Drainage District, on August 26th, 1912, have authorized and levied of an annual tax of Sixteen cents (16c) per acre or as much thereof as may be necessary, on every acre of land in this district, beginning with the year 1912 for thirty-two (32) years consecutively, being the year-1912, to 1944 inclusive, in accordance with Article 281 of the Constitution of this State and the laws of the State.

Therefore, be it resolved, That this board hereby levies and orders the levy and collection of said tax of sixteen — (16¢) per acre on every acre of land in this district for the year 1912, and it is further ordered and resolved that the president of this Board be and he is hereby instructed to do and cause to be done whatever is required by law, to make fully effective the levy and to collect the said tax.

It is further ordered, That a certified copy of this resolution be forwarded to the assessor and a certified copy to the Sheriff of the Parish of St. Bernard to evidence their authority to assess and collect the said tax. Carried.

Resolution Offered by Commissioners Gutierrez, Who Moved Its Adoption, Which Was Thereupon Duly Seconded by Commission-Messa.

Resolution offered by Commissioners Gutierrez, who moved its adoption, which was thereupon duly seconded by Commission- Messa:

Whereas, in accordance with the ordinance voted upon by the property tax payers on August 26th, 1912, the Bayou Terre-aux-Boeufs Drainage District, through its Board of Commissioners, is authorized to incur and indebtedness of five hundred thousand dollars (\$500,000.00) and to issue negotiable bonds for the said amount, represented by five hundred (500) negotiable bonds of one thousand dollars (\$1,000.00) each, and which said bonds are to be secured by and payable in principal and interest out of a sixteen — (16¢) per acre tax voted on January 10th, 1911, and ratified and confirmed at an election held on August 26th, 1912, and which said bonds are to be payable from five (5) months to *to* thirty-
55 one (31) years and five (5) months from their date, and bearing date of September 1, 1912, and the maturity of which said bonds shall begin February 1, 1913, in numerical order, and which said bonds shall bear five per centum (5%) interest per annum from their date, interest payable semi-annually, commencing the first day of February, 1913, in conformity with Art. 281 of the Constitution and laws of the State of Louisiana.

Be it further resolved, That these bonds mature in the following manner:

| Nonds No. | 1 to | 8 inclusive | to mature on February 1, 1913. |
|-----------|------|-------------|--------------------------------|
| " | 9 | 16 | " 1914. |
| " | 17 | 24 | " 1915. |
| " | 25 | 32 | " 1916. |
| " | 33 | 40 | " 1917. |
| " | 41 | 49 | " 1918. |
| " | 50 | 58 | " 1919. |
| " | 59 | 67 | " 1920. |
| " | 68 | 77 | " 1921. |
| " | 78 | 87 | " 1922. |
| " | 88 | 98 | " 1923. |
| " | 99 | 109 | " 1924. |
| " | 110 | 121 | " 1925. |
| " | 122 | 134 | " 1926. |
| " | 135 | 147 | " 1927. |
| " | 148 | 161 | " 1928. |
| " | 162 | 176 | " 1929. |
| " | 177 | 191 | " 1930. |
| " | 192 | 207 | " 1931. |
| " | 208 | 224 | " 1932. |
| " | 225 | 241 | " 1933. |
| " | 242 | 260 | " 1934. |
| " | 261 | 279 | " 1935. |
| " | 280 | 300 | " 1936. |
| " | 301 | 321 | " 1937. |
| " | 322 | 344 | " 1938. |
| " | 345 | 368 | " 1939. |
| " | 369 | 393 | " 1940. |
| " | 394 | 419 | " 1941. |
| " | 420 | 446 | " 1942. |
| " | 447 | 475 | " 1943. |
| " | 476 | 500 | " 1944. |

The whole issue will be retired.

Be it further resolved, That the retirement of these bonds is hereby fixed on the following financial basis. There are shown by the certificate of the assessor to be two hundred and twenty-one thousand (221,000) acres in this district, *with* multiplied by the maximum tax authorized of sixteen cents (16¢) per acre creates a gross revenue of thirty five thousand three hundred and sixty dollars (\$35,360) of which twenty five thousand dollars (\$25,000.00) goes to interest, leaving a balance of ten thousand three hundred and sixty dollars (\$10,360.00) to be applied to the retirement of the bonds as they respectively mature, therefore showing in the first year, with a maximum of sixteen cents (16¢) per acre levied, a balance over 56 and above what is necessary to retire bonds on the First of February, 1913, two thousand and three hundred and sixty dollars (\$2,360.00) to pay the operating expenses of said Board.

Said resolution having been submitted to a vote declared carried.

On motion of Commissioner Gutierrez, seconded by Commissioner Messa the following form of bond was submitted.

UNITED STATES OF AMERICA,
State of Louisiana:

Public Improvement Bond.

Five Per Cent Bond of the Bayou Terre aux Boeufs Drainage District,
Parish of St. Bernard, State of Louisiana.

Know All Men by These Presents, That the Bayou Terre aux Boeufs Drainage District, of the Parish of St. Bernard, State of Louisiana, acknowledges itself to owe, and for value received hereby promises to pay to bearer the sum of One thousand dollars (\$1000.00) on February 1st, 19—, with interest thereon at the rate of five per centum (5%) per annum from date payable semi-annually on the first day of February and the first day of August of each year, as evidenced by the coupon hereto attached, until the principal thereof is paid. The principal sum and interest thereon are payable in gold coin of the United States of the present standard of coinage, at the Interstate Trust & Banking Company in the City of New Orleans, State of Louisiana, or, at the option of the holder thereof, at the Chicago Savings Bank & Trust Company, in the City of Chicago, Illinois, upon the presentation and surrender of this bond and coupon hereto attached, as they respectively mature.

This bond is one of a series of five hundred (500) bonds, all of like date, and numbered One to Five hundred (1-500) inclusive; aggregating in amount five hundred thousand dollars (\$500,000.00) issued for the purpose of public improvement; said bond is issued under the authority of Art. 281 of the Constitution of the State of Louisiana, and in accordance with the provisions of Acts of the Legislature of the State of Louisiana, and pursuant to Ordinances passed by the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District, of the Parish of St. Bernard, State of Louisiana, and submitted to a vote of the property tax payers qualified as electors of the said drainage district, at an election
57 duly held on the 26th day of August, 1912, which said Ordinances provided for the levying of a tax of sixteen cents (16¢) per acre on every acre of land in the said Bayou Terre aux Boeufs Drainage District each year for thirty-two (32) years consecutively, or as much thereof as may be necessary, beginning with the year 1912 and ending with the year 1944 inclusive. This bond and every one issued is secured in principal and interest by said tax of sixteen cents (16¢) per acre, voted at said election; and it is hereby certified that all acts, conditions and things necessary to be done precedent to the issuance of this bond and the other bonds of the series, in order to make them, legal binding and valid obligations of said district, have been done and performed in due form, as required by law, that the total indebtedness of said drainage district including this issue of bonds does not exceed the constitutional or Statutory limitations of indebtedness, and that the tax necessary to pay the same has been duly voted and levied and does not exceed the Constitutional and Statutory limitations.

In Witness Whereof, the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District of the Parish of St. Bernard, State of Louisiana, by virtue of the authority vested in them by the Constitution and laws of the State of Louisiana, have caused this bond to be signed by its President and countersigned by its Secretary, and sealed with the seal of the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District in the Parish of St. Bernard, State of Louisiana, and the interest coupons hereto attached to be executed by the lithographed signature of said President and Secretary, on the first day of September, 1912.

(Signed)

ADAM ESTOPINAL, *President.*

— —, *Secretary.*

Form of Coupon.

No. —.

\$—.

On the first day of February, 19—, the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District will pay to bearer the sum of — at the Interstate Trust & Banking Company, in the City of New Orleans, or, at the option of the holder hereof, at the Chicago Savings Bank & Trust Company, in the City of Chicago, Illinois, being the interest due on Public Improvements Bond dated September 1st, 1912, No. —.

58

— —, *Secretary.*

— —, *President.*

And the said form of bond and coupons as submitted was unanimously adopted by the Board.

Be it further resolved, That these bonds shall bear the following endorsement:

This bond secured by a Tax.

Registered on this — day of —, 19—.

— —,
Secretary of State.

The President of this Board is hereby instructed to see that the said bonds are signed by the Secretary of State in accordance with this resolution and sealed with the seal of the State of Louisiana after the proper lapse of time.

On motion of Commissioner Puig, seconded by Commissioner Messa, it was resolved that the Secretary of this Board be and he is hereby instructed to send a certified copy of the proces verbal canvassing the results of the election of August 26th, 1912, to the Secretary of State and to the Clerk of Court of St. Bernard Parish and to the official journal of said Parish to be respectively registered, recorded and published, according to law Carried.

Resolution by Mr. Gutierrez, seconded by Mr. Puig.

Whereas, the Board of Commissioners of this Drainage District did on the 12th day of January, 1911, authorize the issuance of

bonds aggregating five hundred thousand Dollars (\$500,000.00) in denominations of one thousand Dollars (\$1000.00) each and numbered from one to five hundred inclusive and which said bonds were issued under and by virtue of the terms of an election held in this drainage district on the 10th day of January, 1911, which said election authorized this Board to issue these bonds, and

Whereas, the said bonds were issued and a number of these bonds have been sold in good faith to various parties in accordance with provisions made by this Board; and

Whereas, the Honorable the Supreme Court of the State of Louisiana decided that the bonds thus issued by this Board under the authority conferred at the election held on the 10th of January, 1911, were not good and valid bonds and the said decision was rendered in the case of Board of Commissioners of the Bayou Terre aux Boeufs Drainage District vs. Geo. H. Randolph, No. 19,387 of the docket of the Supreme Court of the State of Louisiana, reported in No. Fifty-nine (59) of the Southern Reporter, Page 198; and

Whereas, an election was called in this drainage District, of date August 26th, 1912, and there was submitted to the property tax payers of the Drainage District the following proposition, to-wit:

1st. To authorize the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District to incur an indebtedness of (\$500,000.00) Five hundred thousand dollars, to be evidenced by five hundred (500) negotiable bonds with interest bearing coupons attached, of one thousand dollars (\$1000.00) each, in conformity with the provisions of Article 281 of the Constitution and laws of this State, said bonds to be secured by and payable out of the annual contribution or acreage tax voted in this district at the election held on the 10th day of January, 1911, the said bonds to mature within forty (40) years after their date and to contain provisions for their prior redemption, at such times and in such amounts as the Board of Commissioners may, by resolution, determine and said bonds to bear five (5%) per cent per annum interest from their date, payable semi-annually on the first day of August and February of each year, commencing with the first day of February 1913, and the proceeds of the sale of which bonds shall be devoted to the accomplishment of drainage work in said district, as in the opinion of said Board of Commissioners may be most desirable.

2nd. To vote and confirm and approve the imposition and levy of an annual contribution or acreage tax of sixteen (16) cents per acre voted at election held in this district on the 10th day of January 1911, the said tax to run for a period not longer than forty (40) years from the date of its imposition and the said tax to be funded into bonds in accordance with law.

3rd. To vote to ratify and approve the bond issue of Sixty thousand dollars (\$60,000.00) ratified at an election held on the 14th day of June, 1909.

4th. To vote to ratify and approve the bond issue of One hundred and sixty-five thousand dollars (\$165,000.00) voted at an election held on the 28th day of December 1909.

Whereas, at the said election on August 26th, 1912, the property tax payers voted in favor of and approved Propositions Numbers 1, 2, 3, and 4, submitted to them at said election, as shown by the proclamation of the President of the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District, of date August 28th, 1912.

Therefore, Be It Resolved, That the President and Secretary of this Board by and with the aid of its special counsel, Mr. H. L. Favrot, are hereby instructed to call in and retire every bond sold of the issues authorized by vote of the property holders, of date January 10th, 1911, and the said officials and special counsel are further authorized to cancel and destroy not only every one of said bonds thus called in and retired but to cancel and destroy every bond of the issue hereabove set forth and described being five hundred (500) bonds of One thousand dollars (\$1000.00) each, aggregating five hundred thousand (\$500,000.00).

Be It Further Resolved That the said officials and special counsel are instructed to exchange number for number every bond thus called in for a bond of the new issue authorized, by virtue of the election held in this drainage District on the 26th day of August 1912.

There being no further business, the Board adjourned.

(Signed)

ADAM ESTOPINAL, *President.*

(Signed)

BEN F. ESTOPINAL,

*Secretary Board of Commissioners of the
Bayou Terre aux Boeufs Drainage District.*

61 *Extracts from the Minutes of the 29th Judicial District Court
of Louisiana in and for the Parish of St. Bernard.*

In the Matter Numbered and entitled as follows, to-wit:

No. 1051.

THE GODCHAUX COMPANY, INC.,

VS.

ALBERT ESTOPINAL, JR., Sheriff, et al.

Monday July 10th, 1916.

The Court met to-day pursuant to adjournment.
Present: the Hon. R. Emmet Hingle, Judge.

Order.

It is ordered that Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, and the Bayou Terre-aux-Boeufs Drainage District do show cause on the 27th day of July, 1916, at 10 o'clock A. M., why an injunction should not issue herein as prayed for.

Signed at chambers this 10th July, 1916, and there being no further business court adjourned to Thursday, July 27th, 1916, at 10th o'clock A. M.

Thursday, July 27th, 1916.

The Court met today pursuant to adjournment.
Present, the Hon. R. Emmet Hingle, Judge.

On motion of R. C. Milling, Esq., of Counsel for plaintiff, Mr. W. W. Wall, Attorney for defendant present and consenting, this case was fixed for trial on Tuesday, October 17th, 1916, and pending the trial of the cause, the preliminary injunction to issue upon plaintiff furnishing bond as required by law, and there being no further business the Court adjourned to Friday, July 28th, 1916, at 10 o'clock.

Monday, October 16th, 1916.

On motion of Oliver S. Livaudais, Esq., by request of Mr. R. C. Milling of Counsel for plaintiff, and on suggesting to the Court that the legal delays have elapsed since the service of Citation and Petition on A. C. Gonzales, Assessor of the Parish of St. Bernard, and the Board of Commissioners for the Bayou Terre-aux-Boeufs Drainage District, two of the defendants in this cause, and that no answer has been filed by either of them,

It is ordered that a judgment by default be entered herein according to law, against the said A. C. Gonzales, Assessor of the Parish of St. Bernard, and against the Bayou Terre-aux-Boeufs Drainage District, and the trial of this cause is otherwise continued and there being no further business the Court adjourned to Monday, October 16th, 1916.

Thursday, November 23rd, 1916.

The Court met this day, (in the office of Hall, Monroe and Le-mann, Esqs., in New Orleans) by consent of all parties.

On motion of R. C. Milling, Esq., of Counsel for plaintiff this case is fixed for trial on Tuesday, November 28th, 1916; Mr. N. H. Nunez, District Attorney and W. W. Wall, Esqs., of Counsel for defendant being present in Court and consenting thereto, and there being no further business the Court adjourned.

Tuesday, November 28th, 1916.

The Court met today pursuant to adjournment.

Present, the Hon. R. Emmet Hingle, Judge.

This case regularly fixed came on this day for trial.

Present, Mr. R. C. Milling of Counsel for plaintiff and Wm. Winans Wall, Esq., Attorney for defendants.

A statement of facts having been agreed upon by the parties and said statement of facts having been taken by the official stenographer of the Court to be filed in the record, the case was submitted on briefs to be furnished within twenty days, and there being no further business the Court adjourned.

Friday, April 27th, 1917.

The Court met today, pursuant to adjournment.
Present the Hon. R. Emmet Hingle, Judge.

In the matter heretofore submitted, the Court rendered the following.

Judgment.

The law and the evidence being in favor thereof, and for the written reasons this day filed.

63 It is ordered, adjudged and decreed that there be judgment herein in favor of defendants, (Albert Estopinal, Jr., Sheriff, and the Board of Commissioners for the Bayou Terre-aux-Boeufs Drainage District) over and against plaintiff, Godchaux Co., Inc., dismissing plaintiff's suit dissolving the injunction issued herein and maintaining the validity of the (16¢) Sixteen cents per acre tax, the validity of which is attacked by plaintiff.

Further ordered, that plaintiff pay all costs and legal penalties.

Judgment read, rendered and signed in open Court, this 27th April, 1917.

(Signed)

R. EMMET HINGLE, *Judge.*

For reasons for Judgment, see Folio 64 of this Transcript.
And there being no further business the Court adjourned.

STATE OF LOUISIANA,
Parish of St. Bernard:

I hereby certify the above and foregoing to be a true and correct extract from the minutes of the 29th, Judicial District Court of Louisiana, for the Parish of St. Bernard of the dates of July 10th, 27th, 1916, and October 16th, 1916, November 23rd, and 25th, 1916, and April 27th, 1917.

[The Seal of the Clerk, Parish of St. Bernard, State of Louisiana.]

(Signed)

JAS. D. ST. ALEXANDRE, *Clerk.*

Reasons for Judgment, and Judgment.

Filed April 27th, 1917.

29th Judicial District Court, Parish of St. Bernard, State of Louisiana.

No. 1051.

GODCHAUX Co., Inc.,

versus

ALBERT ESTOPINAL, JR., Sheriff, and BOARD OF COMMISSIONERS OF
BAYOU TERRE-AUX-BOEUFs DRAINAGE DIST.*Reasons for Judgment.*

This is a suit brought by Godechaux Co., Inc., to enjoin the Sheriff and ex-Officio Tax Collector of the Parish of St. Bernard, from collecting an acreage tax of sixteen cents per acre, for the year 1915, levied by the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, on each and every acre of land, situated within the limits of said Drainage District, by authority conferred by the property tax payers, at an election held on January, 10, 1911, in pursuance of the power vested by Art. 281 of the State Constitution, as amended in accordance with Act 197 of 1910, on 3,635.52 acres of swamp or marsh land, forming a part of the Contreras Plantation, situated within the limits of the Bayou Terre-aux-Boeufs Drainage District, which land is not susceptible of being drained by gravity. The Contreras Plantation contains, in addition to the swamp or marsh land, 565.56 acres of land, which is susceptible of being drained by gravity.

In the petitions, the validity of the said acreage is attacked on two grounds:

1st. That, under the Constitution, no acreage tax could be imposed by authority of a vote of the property tax payers upon any land in the Bayou Terre-aux-Boeufs Drainage District not susceptible of gravity drainage; And,

2nd. Because the system of drainage, adopted by the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, has not benefited and will not benefit the said swamp or marsh land, and the claim is made that to enforce the payment of said annual acreage tax would deprive the plaintiff of its property, without due process of law.

65 Plaintiff also avers that it has paid all of the taxes, assessed against its said swamp or marsh land, except the said sixteen cents acreage tax, and that it has paid all taxes, including the sixteen cents acreage tax, upon its said land, which are susceptible of gravity drainage.

A preliminary writ of injunction, restraining the collection of the taxes pendente lite, was issued.

The Sheriff filed, first, an exception of non-joinder of party defendant, and, later, an exception of no cause of action. The filing of the latter exception necessarily waived the former, and as the case has been tried upon its merits, I prefer to decide it, without reference to the exception of no cause of action, although I believe that exception well-founded.

The Sheriff and ex-Officio Tax Collector and the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District have filed separate answers. Both answers raise substantially the same defenses, which are:

1st. A plea of estoppel, based on allegations to the effect that the Police Jury of St. Bernard Parish, while the provisions of Act 159 of 1902 were in force, created the Bayou Terre-aux-Boeufs Drainage District, legally and politically, and delimited territorially said Drainage District, and the Board of Commissioners was then organized and assumed jurisdiction of all of its affairs and of all of the land within its boundaries; that, thereafter, the Board of Drainage Commissioners, with the assistance of the Board of State Engineers and its own Engineer, adopted a general plan of drainage for the Bayou Terre-aux-Boeufs Drainage District, and from 1906 up to 1910, caused five elections to be held by the property tax payers of the District, to vote ad valorem and acreage taxes to defray the costs of constructing that general system of drainage; that those elections resulted in the levy of an annual three cents per acre upon every acre of land within the District, and funding the same into an issue of Sixty Thousand Dollars (\$60,000.00) of bonds; and, second, the
66 levying of an annual six cents per acre tax on every acre of land within the District, and funding the same into bonds; that, during the years 1911 and 1912, the Board of Commissioners caused two elections to be held, which resulted in the voting and the levying of the sixteen cents per acre tax, on every acre of land in the District, to be used to defray the costs of constructing a general system of drainage; that the results of the elections were promulgated, by publication, according to law; that the validity of the bonds was litigated, and passed on four times by the Supreme Court of Louisiana, before they were sold; that the plaintiff and its predecessors, while said Drainage District was being created, and its Board of Commissioners organized, and said taxes voted and levied, and said bonds issued and sold, not only failed and neglected to make any protest, but, on the contrary, from the year 1909 to 1914, both inclusive, paid, not only the three and six cents acreage taxes, but also the sixteen cents acreage taxes on its marsh or swamp land, not susceptible of being drained by gravity, and thereby, unqualifiedly and unmistakably, announced its acquiescence in and approval of all proceedings resulting in the levy of the said taxes and in said levies themselves.

2nd. That an honest mistake of judgment, on the part of the legislative department of the State, in determining benefits to accrue from the construction of a public improvement, constitutes no ground for annulling special taxes or forced contributions, in aid of the construction of the public improvement, particularly where such special

taxes or forced contributions have been funded into bonds, which have been sold, for their par value, to the public.

3rd. That the special acreage tax of sixteen cents per acre, levied on all land throughout the Bayou Terre-aux-Boeufs Drainage District, is valid, and not subject to attack by plaintiff, and that all of the requirements of law were complied with by the Tax Collector, up to the time of the issuance of the preliminary writ of injunction.

4th. That this court is without jurisdiction *ratione materiae* to entertain this suit, because an attack on said special acreage tax or forced contribution of sixteen cents per acre, levied by the property owners and the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District, is an attack on the bonds into which said tax has been funded, and the jurisdiction to entertain any such contest, where such bonds have not been declared invalid by a judgment of the court of last resort in the State of Louisiana, and more than sixty days have elapsed since the promulgation of the proceedings, evidencing the issuance of said bonds, without said bonds having been attacked on account of fraud, was withdrawn from all the courts of the State of Louisiana, and such bonds declared to be valid and existing bonds or obligations of the subdivision issuing them, by the amendment to Art. 281 of the Constitution adopted in 1914.

The evidence shows that the Bayou Terre-aux-Boeufs Drainage District was created, in accordance with law, in 1906, and that the area embraced within its limits was comprised of both high land, susceptible of being drained by gravity, and swamp or marsh land, the surface of which was practically at mean tide level, which was not susceptible of being drained by gravity, but could only be drained by levees and pumps. After the organization of the Board of Commissioners of the Drainage District, the Board of Commissioners, with the assistance of the Board of State Engineers and its own special Engineer, adopted a general system of levees and canals to serve the entire District, the canals being intended to drain the high land by gravity, and also to afford outlets into which the water from the land not susceptible of being drained by gravity could be pumped, and the levees, which were to be constructed of excavation from the canals, would serve to protect the entire District from tidal overflow, thus obviating the necessity for a separate system of levees for each Sub-Drainage District within the swamp or marsh areas.

See the testimony of plaintiff's expert witness, Hugh C. Smith, Civil Engineer, who was the first Engineer of the Bayou Terre-aux-Boeufs Drainage District, on cross-examination, page 9 of the Note of Evidence:

By Mr. Wall:

68 "Q. The idea of the Engineer of the Board was that if this District were reclaimed by forming Sub-Drainage Districts, that general system of outlets for each Sub-Drainage District was necessary?

A. Yes, sir; that was the idea, to form these units as the demand for them was made. As this country would be settled up, we began

with unit one, and the upper portion; that was the idea of the conception.

Q. The land down three—the flat lands—have no possible value except they are drained?

A. None. This general outline was to protect that area from tidal overflow, so as to enable us to subdivide that into units, and take care of each unit as it came up.

Q. Each unit, of course, would present an independent engineering proposition?

A. And when the whole was completed, to make one comprehensive system.

Q. That was the idea?

A. Yes, sir; these units were to be worked so as when completed, one after the other, they would work into one general system.

Q. And these drainage canals would be used as an outfall canal?

A. Yes, sir."

There is no suggestion, either in the petition of plaintiff or in the evidence adduced on the trial, that there was any fraud or abuse of power or discretion on the part of the Police Jury in the creation of the Bayou Terre-aux-Boeufs Drainage District, or its delimitation territorially, and, I understand from the argument of the learned counsel for the plaintiff, that it is conceded that prior to the amendment to Art. 281 of the State Constitution in 1910, the drainage districts throughout the State were authorized by Art. 281 of the Constitution to levy special acreage taxes, on each acre of land within the limits of their respective districts, for the purpose of constructing systems of drainage, whether by gravity or by levees and pumps, and there could be no doubt of such authority, because, in
69 connection with this identical Drainage District, the Supreme

Court of Louisiana, in the case of Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District versus Baker, reported in the 124 La., affirmed the right of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to levy a special acreage tax of three cents per acre on every acre of land within its limits. Before proceeding to affirm the validity of such a levy, the court stated the question before it for decision to be:

"Whether a tax of five mills on all assessable property in the plaintiff district, and another tax of three cents per acre on every acre of land within its limits shall be levied for forty years, beginning with 1908, for the purpose of draining the district, have been legally imposed, is the question," 124 La., 217.

Of course, it is too plain for discussion that where the authority to levy a tax of less than the constitutional limit is in controversy, and the Supreme Court affirms the authority to levy such a tax, there is a direct affirmance of the right to levy, up to the constitutional limit. If the right existed to levy acreage taxes on each and every acre of land throughout the Drainage District, to provide a general system of drainage for the District of whatever character that might appeal to the good judgment of the Board of Commissioners, as feasible and preferable, prior to the amendment to Art. 281 of the Constitution

adopted in 1910, the right would continue to exist, unless destroyed by the amendment. Upon consulting Act 197 of 1910, which later became Art. 281 of the Constitution, we find the third paragraph to be as follows:

"Municipal councils shall have authority to create within their respective limits one or more sewerage districts; and nothing herein contained shall prevent drainage districts from being established under the laws of this State, which shall, in addition to the powers hereinabove granted, have the further power and authority to levy
70 and assess annual contributions or acreage taxes on all lands situated in such districts, for the purpose of providing and maintaining drainage systems, not exceeding fifty (50) cents per acre for a period not exceeding forty (40) years, when authorized to do so by a majority in number and amount of the property tax payers of said district, qualified to vote under the Constitution and laws of this State, who vote at an election held for the purpose and in the manner provided in the first part of this article, and said drainage districts, through the boards of commissioners thereof, when authorized as hereinabove provided, 'may incur debt and issue negotiable bonds therefor, payable in principal and interest out of and not to exceed in principal and interest, the aggregate amount to be raised by said annual contributions or acreage taxes during the period for which the same are levied. No such drainage bonds shall be issued for any other purpose than that for which said contributions or acreage taxes were voted or run for a longer period than forty (40) years from their date or bear a greater rate of interest than five (5) per cent per annum or be sold for less than par.'"

By comparing this article, with the corresponding paragraph of Art. 281 of the Constitution, as it was from 1906 to 1910, we find that the language is the same, except that the amount of the annual acreage tax, that could be levied, was increased from twenty-five cents to fifty cents per acre. A mere reading of the paragraph discloses the fact that it is complete in itself, and does not limit the Board of Drainage Commissioners to a gravity drainage system. A reading of the whole of Act 197 of 1910 does not disclose any limitation as to the kind of drainage system, whether by gravity or levees and pumps, that may be constructed by the Board of Commissioners, with the proceeds of acreage taxes voted by the tax payers of the District. My interpretation of Art. 281 of the Constitution, as amended in 1910, is that it provided three complete, comprehensive, independent and alternative methods of securing drainage:

- 1st. It is provided that a drainage system, without specifying its character, may be constructed, with the proceeds of bonds,
71 based on an ad valorem tax on all property throughout the District, authorized at an election by the property tax payers.
- 2nd. It is provided that a drainage system may be constructed, with the proceeds of bonds, based on an acreage tax on all property throughout the District, authorized at an election by the property tax payers.
- 3rd. It is provided that a drainage system, by levees and pumps, may be constructed, affecting particular areas, on the petition of the

owners of a majority of the acres of land to be affected by the particular system of drainage to be installed.

The Legislature and people of the State of Louisiana have interpreted this Article of the Constitution in the same way, for, in order to restrict the character of the system of drainage that could be provided from funds derived from bonds based on acreage taxes voted by the property tax payers of the District, to gravity drainage, it was found necessary to amend the paragraph of Art. 281 of the Constitution, providing for the construction of drainage systems from the proceeds of bonds based on acreage taxes, so as to limit the character of the system to gravity drainage, and the tax to land susceptible of gravity drainage. If, as learned counsel for plaintiff contends, the Article already limited such a system to gravity drainage, and the tax to land susceptible of drainage by gravity, the Legislature, in submitting the proposed change in this paragraph of Art. 281 to the people of the State, for their approval, and the people, in approving such change, have been guilty of a foolish act. In my opinion, the amendment was necessary, in order to take away the right of the Board of Commissioners to construct a system of drainage by levees and pumps, with the proceeds of bonds based on acreage taxes, if it saw fit to do so, and its power to levy acreage taxes on every acre of land in the Drainage District up to the constitutional limit to pay such bonds, remained unimpaired, up to the time of the amendment of 1914.

In the case of *Dhaw v. Board of Commissioners of the Bayou Terreaux-Boeufs Drainage District*, 138 La., 928, Chief Justice Monroe said:

72 "The issue of \$500,000.00 of bonds was authorized by the taxpayers, at an election held for that purpose on August 26, 1912, and it is alleged by plaintiff that the authority to impose the tax for their payment was derived from the acts of 1910 and 1912, to which we have referred; but we do not so understand it. The tax was authorized before the act of 1912 became a law, in the parish of St. Bernard, and the scheme of taxation contemplated by section 21 of Act 317 of 1910 being entirely different from that contemplated by the constitutional amendment of 1906, in accordance with which the tax herein in question was levied. The scheme proposed by the statute must have been intended as an alternative to that provided for by the Constitution, and was necessarily optional, and not compulsory, since the statute could not have been intended to repeal the Constitution.

"The case of *Marceaux v. Cameron Drainage District No. 3*, 136 La., 913, is based upon provisions of the constitutional amendment of 1914 (other than that heretofore referred to) which contemplate the establishment of systems of 'gravity drainage,' make it the duty of drainage commissioners to pursue a particular method in providing for both drainage and reclamation of lands which must be leveed and pumped, and authorize a maximum acreage tax of \$3.50 per acre.

"It is evident that the change in the law was made because it was thought that the rights conferred, and obligations imposed, by the

new constitutional enactment, had not been conferred and imposed by the old, which was true. And it is equally evident that the change was by constitutional amendment, because it was thought, in view of the existing provisions of the Constitution, that the General Assembly was powerless to make it, which was also true. But the amendment in question does not affect, or purport to affect, rights acquired under the Constitution, as it stood prior to the adoption of the amendment, and hence the decision in the Marceaux case has no bearing in this case.

73 "Our conclusion, then, as relates to the tax of 16 cents per acre, levied for the payment of the bond issue of \$500,000.00, as also the taxes of 3 and 6 cents per acre levied for the other bonds, is that they were validly levied, under the amendment proposed by Act 122 of 1906, upon 'all lands situated in the Bayou Terre-aux-Boeufs Drainage District,' and that plaintiff has no standing to question their validity upon the grounds alleged in his petition." 138 La., pp. 928-929.

Therefore, I conclude that the Board of Commissioners, fully authorized and empowered by the Constitution, as it stood from 1910 to 1914, had the power to levy the sixteen cents per acre tax on plaintiff's swamp or marsh lands, in 1915, and that the taxes of that year are valid and collectible.

I do not understand that it has ever been decided by any court that where a special tax has been levied, according to law, to pay for a public improvement, and the tax has been funded into bonds and the bonds sold and the proceeds used to pay for the public improvement, but, owing to an honest mistake of judgment, on the part of the legislative body, authorizing the tax, there is a failure to realize the benefits contemplated, such failure of benefits can be urged as a reason for repudiating the tax. Certainly, the learned counsel for the plaintiff has not directed the attention of the court to any such case.

In the case of *L. & N. R. R. v. Barber Asphalt Paving Co.*, 197 U. S. 430, 433, Mr. Justice Holmes, as the organ of the court, said:

"The argument for the plaintiff in error oscillates somewhat between the objections to the suit and the most specific grounds for contending that it cannot be applied constitutionally to the present case. So far as the former are concerned, they are disposed of by the decisions of this court. There is a lack of logic when it is said that special assessments are founded on special benefits, and that a law

74 which makes it possible to assess beyond the amount of special benefit attempts to rise above its source. But that mode of argument assumes the exactness in the premises which does not exist. The foundation of this familiar form of taxation is a question of theory. The amount of benefit which an improvement will confer upon particular land—indeed, whether it is a benefit at all—is a matter of forecast and estimate. In its general aspects, at least, it is peculiarly a thing to be decided by those who make the law. The result of the constitutional principle is simply to shift the burden to a somewhat large taxing district—the municipality—and to disguise, rather than to answer, the theoretic doubt. It is danger-

ous to tie down legislatures too closely by judicial constructions not necessarily arising from the words of the Constitution. Particularly, as was intimated in *Spencer v. Merchant*, 125 U. S. 345, it is important for this court to avoid extracting from the very general language of the 14th amendment a system of delusive exactness in order to destroy methods of taxation which were well known when that amendment was adopted, and which it is safe to say that no one then supposed would be disturbed. It now is established beyond permissible controversy that laws like the one before us are not contrary to the Constitution of the United States. *Walston v. Nevin*, 128 U. S., 578; *French v. Barber Asphalt Paving Co.*, 181 U. S., 324; *Webster v. Fargo*, 181 U. S., 394; *Cass Farm Co. v. Detroit*, 181 U. S., 396; *Detroit v. Parker*, 181 U. S., 399; *Chadwick v. Kelly*, 187 U. S., 540; *Schafer v. Werling*, 188 U. S., 516; *Seattle v. Kelleher*, 195 U. S., 351, 358.

"A statute like the present manifestly might lead to the assessment of a particular lot for a sum larger than the value of the benefits to that lot. The whole cost of the improvement is distributed in proportion to area, and a particular area might receive no benefits at all, at least, if its present and probable use be taken into account. If that possibility does not invalidate the act, it would be surprising if the corresponding fact should invalidate an assessment. Upholding the act as embodying a principle generally fair and doing as nearly equal justice as can be expected, seems to import that if a particular case of hardship arises under it, in its natural and ordinary application, that hardship must be borne as one of the imperfections of human things.

"And this has been the implication of the cases. *Davidson v. N. O.*, 96 U. S., 97, 106; *Mattingly v. District of Columbia*, 97 U. S., 687; *Parsons v. District of Columbia*, 170 U. S., 45, 52, 55; *Detroit v. Parker*, 181 U. S., 399, 400; *Chadwick v. Kelly*, 187 U. S., 540, 544."

The principles announced in that case and in the cases cited are directly in line with the decisions of our own Supreme Court, in the cases of *George, et al., v. Sheriff and Tax Collector*, 45 Ann., 1233; *De Gravelle v. Iberia and St Mary Drainage District*, 104 La., 707; *Myles Salt Co. v. Iberia and St. Mary Drainage District*, 134 La., 903; and *Shaw v. Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District*, 138 La., 917.

The cases relied upon by the plaintiff are: *Norwood v. Baker*, 179 U. S., 269; *Myles Salt Co. v. Iberia and St. Mary Drainage District*, 239 U. S., 478; and *Shaw v. Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District*, 138 La., 917. Those cases can have no possible application to the facts of this case.

The case of *Norwood v. Baker* was a case whereby a village ordinance apparently aimed at a single person (a portion of whose property was condemned for a street) the entire cost of opening the street, including not only the full amount paid for the strip condemned, but the costs and expenses of the condemnation proceedings, was thrown upon the abutting property and the person whose land was condemned. The Supreme Court of the United States, under these facts, held that the taking was not a legitimate exercise of the taxing

power. It was, in effect, a taking of private property for public use without compensation.

The Myles Salt Co. case was a case that went up to the Supreme Court of the United States on an exception of no cause of action, which admitted, for the purposes of the trial of the questions of law involved, the truth of the allegations of the petition. In the petition, it was charged that the Police Jury, in organizing the Drainage District, included Weeks' Island and the salt deposits therein, only for the benefit of the other property and not upon the theory that a general scheme of drainage would enure to the benefit of all the property herein, even indirectly, and not through the exercise of sound and legal legislative discretion the Island was included within the confines of the District, and that, in pursuance of said scheme and plan, an election was held for the imposition of an ad valorem tax of five mills for a period of forty years upon which to predicate an issue of bonds.

Therefore, that case disclosed a fraud or palpable abuse of its discretion on the part of the legislative department, in creating the Drainage District, and the Supreme Court of the United States very properly held that where it was shown that the legislative branch of the Government had included property within the limits of the taxing district for a public improvement, for the purpose of deriving a revenue to be applied solely and exclusively to the benefit of other property, and with the intention of obtaining a revenue to be expended for the benefit of other property, to force the property so included to pay the tax, would be to deprive the owner of his property without due process of law.

In the case of Shaw v. Board of Commissioners, the Supreme Court found that the Police Jury had included Shaw's property in the Drainage District, solely for the purpose of deriving revenues, to be expended for the benefit of other lands, subject to be improved by drainage, without any benefit to plaintiff or his property whatever, present or prospective.

"It is clear that plaintiff's property was included in the Drainage District not in the exercise of 'legal legislative discretion,' not because the system of drainage would enure to the benefit of the property, even indirectly, but with the purpose of deriving revenues, so as to grant a special benefit to other lands, subject to be improved by drainage, without any benefit to plaintiff or his property whatever, present or prospective."

And, it was under that state of facts, that the Supreme Court of Louisiana held that the collection of the tax would deprive Shaw of his property, without due process of law.

Therefore, it is obvious that none of the three cases relied on by plaintiff are, in any sense, pertinent to this case, wherein there is not even a suggestion of any fraud or palpable abuse of legislative discretion on the part of the Police Jury in creating the Drainage District,—the worst that could be said being, even accepting counsel's interpretation of the facts, in which the court does not concur, that owing to an honest mistake of judgment, the benefits determined by

the Police Jury, as a result of the public improvement, have failed to materialize.

The plea of estoppel urged by the defendant should be maintained. It appears from the testimony of Mr. Chas. Godchaux, the President of the plaintiff company, that the plaintiff, although fully aware that the Drainage District had been created, the property owners had voted taxes, which were being funded into bonds and sold, not only did not protest, but approved all of the proceedings, and expressed its approval by paying all taxes levied by the Drainage District, including the sixteen cents acreage tax, which is the only one attacked, up to the year 1914, inclusive, and only refused to pay the sixteen cents per acre tax in 1915, after the bonds had been sold to bona fide holders.

See the testimony of Mr. Chas. Godchaux, page 4 of the Note of Evidence:

"By Mr. Wall:

"Q. Mr. Godchaux, did you pay a sixteen cents acreage tax for 1912?

A. I think we did.

Q. 1913?

— I think we did.

Q. And 1914?

A. I think we did.

Q. It was only in 1915 that you refused to pay?

A. For the reason that we were always under the impression that they were going to put up pumps. It was only upon investigating thoroughly, we found that the system contemplated would, with the money available, not be sufficient, and therefore there was no use paying a tax, from which we would get no benefit. We have

78 always been very willing, Mr. Wall, to pay any special tax. We paid the tax for the shell road; paid large taxes without any revenues, and will be glad to pay the tax if we got some benefit out of it. We believe in taxes and reclamation.

Q. Did you make any investigation of the proceedings of the Board, Mr. Godchaux, to find out whether any pumps were contemplated by the District in connection with the general system that they had outlined?

A. We investigated in a general way, and if I am not mistaken was advised that they were going as far as the funds would permit them. That the funds from this tax would not enable them to put in pumps.

Q. When you did investigate you found that your supposition that there would be pumps was erroneous, and then you declined to pay any further?

A. Yes, sir.

Q. In the meantime, while the bonds were being voted and put on the market and sold, and the proceeds expended on this system, you made no protest?

A. Not that I remember, no sir."

"The right to enforce or protect a constitutional right in a court of equity may be lost by laches, the same as other rights. Ency. of U. S. Supreme Court Reports, Vol. 4, p. 80; Pennsylvania Mutual Life Ins. Co. v. Austin, 168 U. S., 685." "Under some circumstances a party who is legally assessed may be held to have waived all right to a remedy by a course of conduct which renders suit unjust and inequitable to others that he should be allowed to complain of the illegality. Such a case would exist if one should ask for and encourage the levy of the tax of which he subsequently complains; and some of the cases go so far in this direction as to hold that a mere failure to give notice of objections to one who, with the knowledge of the person taxed, as contractor, or otherwise, is expending money in reliance upon payment from the taxes, may have the same effect. Cooley on Taxation, p. 573, and cases cited in note 5; Tagh v. Adams, 10 Cush., 252; Bidwell v. City of Pittsburgh, 85 Pa. St. 412; Shutte v. Thompson, 15 Wall., 151." Shepard v. Barron, 194 U. S., 553.

The Supreme Court of Louisiana is in full accord with the Supreme Court of the United States:

"A taxpayer who petitions for the passage of an ordinance levying a special tax, who actively supports and votes for the ordinance, when submitted to the votes of the tax payers, who has so acted in advancement of his own interest, and who has secured advantage from the passage of the ordinance, upon which other parties have acted, is estopped from setting up the illegality and unconstitutionality of the tax as a defense against paying it." Clinton B. Andrus v. Board of Police of Opelousas, et al., 41 Ann., 697. "See also, Laurent Dupre v. Board of Police of Opelousas, et als., 42 Ann., 801; Mayor, etc., of New Iberia v. Fontellieu, 108 La., 461; Taxpayers of Webster Parish v. Police Jury, 52 Ann., 466; Bucas v. Adler, 112 La., 814; Burden v. Police Jury of St. Martin Parish, 127 La., 556. The reason of the law is that, if there be grounds for contesting the tax, those who complain should bring the matter to the attention of the courts within a reasonable time—not wait until the railway company, acting upon the faith of what has been done and the inducement held out, has gone ahead and expended large sums of money in prosecuting the enterprise, the promotion of which was the object of voting the tax." Guillory v. Avoyelles Railway Co., 104 La. 14. See James v. Arkansas-Southern Ry. Co., 110 La., 159; Gray v. Bourgeoise, 107 La., 67.

And, finally, the Supreme Court of the United States, in the case of Tulare v. Shepard, where the effect of acquiescence by the tax payers in paying taxes levied by a de facto irrigation district, which it was claimed had not been legally organized, and where the property owners claimed that the collection of the taxes levied by such district deprived them of their property, without due process of law, was fully dealt with at length, Mr. Justice Peckham, as the organ of the court, after holding that the de facto irrigation district was absolutely estopped from questioning the validity of the bonds in the hands of a bona fide holder, held that the property owners of the de facto corporation were estopped from raising

any objection after having acquiesced in the bonds by paying taxes, as follows:

"In addition to the strength of the position of the plaintiff in the action as a bona fide purchaser and holder of the bonds, the position of defendants merits due consideration. Regarding the individual defendants, it is scarcely possible to believe that they were not aware of the proceedings above recited, taken to organize the corporation, and thereafter to issue its bonds, even though it should be admitted that the public notice was not legally sufficient to comply with the statute. They were the owners of land within the proposed district. The proceedings were all of a public nature, and two public elections were held within the district before the bonds were issued. Of these facts, already detailed, we say it is impossible to believe that the individual defendants did not have knowledge at the time of their occurrence, and yet they took no action to prevent the issuing of the bonds or to call in question by the slightest hint the validity of the organization of the district as a corporation. On the contrary, they entirely acquiesced in all proceedings leading up to their issue, in obtaining the moneys therefrom, in the expenditure thereof for the purpose for which the bonds were issued, and in paying during several years the assessments made upon the lands within the district for the purpose of paying the interest on the bonds which had been issued. After all this had been done, we can properly use the language found in the opinion in *Bissel v. City of Jeffersonville*, 24 How., supra, at p. 299: 'It was then too late to call in question the fact determined by the Common Council and a fortiori it is too late to raise that question in a case like the present, where it is shown that the plaintiffs are innocent holders for value.' Assuming the insufficiency of the notice of the intended presentation of the

81 petition to the Board of Supervisors, the defendant land owners could have applied to the Attorney-General for the commencement of an action in the nature of a quo warranto, to raise and decide the question, after the Board had decided the organization was duly formed. Or they could have themselves commenced an action to restrain the proposed issue of bonds on the ground that there was no valid corporation, and therefore no valid body to issue them. Their interest as land owners in the district would be sufficient to permit them to maintain such action. On the contrary, they did nothing, and in view of all the facts above detailed, and giving due effect to the provisions of the statute referred to and the determination of the supervisors, together with the recitals in the bonds, it is clear to us that they waived their right to thereafter object on the ground stated, as against a bona fide holder of the bonds for value. As to the defendant corporation, it seems so clear that it cannot be heard to set up the invalidity of the bonds on the ground that it was not legally incorporated, that we do not think it necessary to further discuss the question. *Taylor on Corporation*, 4 Ed., Sec. 146." *Tulare Irrigation District v. Shepard*, 185 U. S., pp. 25, 26.

A decision of the objection urged by plaintiff to the jurisdiction of the court *ratione materiae* is not necessary to a decision of the

case, as I am of the opinion that the tax is valid and the Injunction issued herein should be dissolved.

The Tax Collector will collect the attorney's compensation, at 10% on the aggregate amount of the taxes and penalties collected from the plaintiff, in accordance with Section 56 of Act 170 of 1898.

Judgment is hereby entered in favor of the defendant as prayed for, dissolving the preliminary injunction issued herein, recognizing the validity of the acreage tax of sixteen cents per acre levied on plaintiff's said property for the year 1915. And for all costs and penalties imposed by law.

Parish of St. Bernard, April 27, 1917.

(Signed)

R. EMMET HINGLE, *Judge*.

82 *Judgment Granting Issue of Preliminary Injunction Prohibiting Sale of Property for 16¢ Drainage Tax.*

Filed July 28th, 1916.

29th Judicial District Court, Parish of St. Bernard.

1051.

GODCHAUX COMPANY, Incorporated,

v.

ALBERT ESTOPINAL, JR., Sheriff.

Judgment.

The rule, issued herein, to show cause why a temporary injunction should not issue herein, having been regularly called for trial, and after trial had, the law and the evidence being in favor of the plaintiff.

It is Ordered, that a preliminary injunction issue herein, on plaintiff furnishing bond in favor of defendant with one good and solvent surety in the sum of One Thousand Dollars, this being the amount of taxes contested, plus interest and costs, and fifty per cent additional thereon, enjoining and prohibiting the said Albert Estopinal, Jr., Sheriff, and the Board of Drainage Commissioners of the Bayou Terre aux Boeufs Drainage District from selling the property of plaintiff for the sixteen cent (16¢) acreage tax. Pending the injunction the Sheriff is authorized to accept the acreage tax admitted, by plaintiff, to be due.

Read and signed in open Court this 28th day of July, 1916.

(Signed)

R. EMMET HINGLE, *Judge*.

Service accepted, and a copy of the within judgment received this 28th day of July, 1916.

(Signed)

FERDINAND BEL,
Dy. Sheriff.

Judgment in Favor of Defendants.

29th Judicial District Court, Parish of St. Bernard, State of Louisiana.

No. 1051.

GODCHAUX Co., Inc.,

versus

ALBERT ESTOPINAL, JR., Sheriff, and BOARD OF COMMISSIONERS OF
THE BAYOU TERRE-AUX-BOEUFs DRAINAGE DISTRICT.

Judgment.

The law and the evidence being in favor thereof, and for the written reasons this day filed:

It is ordered, adjudged and decreed that there be judgment herein in favor of defendants (Albert Estopinal, Jr., Sheriff, and the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District), over and against plaintiff (Godchaux Co., Inc.), dismissing plaintiff's suit, dissolving the injunction issued herein, and maintaining the validity of the sixteen cents per acre tax, the validity of which is attacked by plaintiff.

It is further ordered that plaintiff pay all costs and legal penalties.

Judgment rendered, read and signed in open Court, this 27th day of April, 1917.

(Signed)

R. EMMET HINGLE, *Judge.*

Petition and Order for Appeal.

Filed May 5th, 1917.

29th Judicial District Court, Parish of St. Bernard.

No. 1051.

GODCHAUX COMPANY, Incorporated,

v.

ALBERT ESTOPINAL, JR., Sheriff, et al.

To the Honorable R. Emmet Hingle, Judge of the Twenty-ninth Judicial District Court in and for the Parish of St. Bernard, State of Louisiana:

The petition of the Godchaux Company, Incorporated, a corporation organized under the laws of the State of Louisiana and domiciled in the City of New Orleans, plaintiff in the above styled and numbered suit, represents that there was a judgment recently ren-

dered in said cause, dismissing the demand of the plaintiff and dissolving the injunction herein.

Your petitioner therefore shows that it is aggrieved by the said judgment, and desires to appeal therefrom both suspensively and devolutively.

Wherefore, it prays that an order of appeal should issue herein in the alternative, both suspensive and devolutive, returnable to the Supreme Court of the State of Louisiana on a date to be fixed by your Honorable Court, and that there be citation of appeal to the defendants herein, Albert Estopinal, Jr., Sheriff, and the Board of Commissioners for the Bayou Terre aux Boeufs Drainage District.

It prays for all necessary orders and decrees in the premises, and for general relief.

(Signed) FOSTER, MILLING, SAAL & MILLING,
Attorneys for Plaintiff.

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Mr. R. C. Milling, who being by me first duly sworn, deposes and says: That he is an attorney of record in the above numbered and entitled cause; that he has read the foregoing petition for appeal, and that all the facts and allegations therein are true and correct, to the best of his knowledge and belief.

85 (Signed) R. C. MILLING.

Sworn to and subscribed before me at New Orleans, La., this 5th day of May, 1917.

(Signed)

W. F. MILLING,
Notary Public.

[SEAL.]

Order.

On considering the foregoing petition, prayer and affidavit, It Is Ordered that an appeal, both suspensive and devolutive, in the alternative, returnable on the 4th day of June, 1917, to the Supreme Court of the State of Louisiana, be and the same is hereby granted to the plaintiff, the Godchaux Company, Incorporated, upon the plaintiff executing bond in case of devolutive appeal in the sum of Two Hundred & Fifty Dollars, and in case of suspensive appeal in the sum of One Hundred Dollars; and let citation of appeal issue and be served upon all the defendants herein according to law.

Ordered and signed on this the 5th day of May, 1917.

(Signed)

R. EMMET HINGLE, *Judge.*

Appeal Bond.

Filed May 5th, 1917.

29th Judicial District Court, Parish of St. Bernard, State of Louisiana.

No. 1051.

GODCHAUX COMPANY, Incorporated,

v.

ALBERT ESTOPINAL, JR., Sheriff, and BAYOU TERRE AUX BOEUFs
DRAINAGE DISTRICT.

Know all Men by These Presents: That we, Godchaux Company, Incorporated, as principal, and Globe Indemnity Company as surety, are held and firmly bound unto J. D. St. Alexandre, Clerk of the Twenty-ninth Judicial District Court for the Parish of St Bernard, State of Louisiana, his successors, executors, administrators and assigns, in the sum of Three hundred & fifty Dollars (\$350 00/100) for the payment whereof we bind ourselves, our heirs, executors and administrators firmly by these presents.

Dated in the City of New Orleans on this 8th day of May, in the year of our Lord, one thousand nine hundred and seventeen.

86 Whereas, the above bounden Godchaux Company, Incorporated, has obtained an order of appeal, both suspensive and devolutive in the alternative, from a final judgment rendered against it in the suit of Godchaux Company, Incorporated, v. Albert Estopinal Jr., Sheriff, and Bayou Terre aux Boeufs Drainage District, No. 1051 of the 29th Judicial District Court for the Parish of St. Bernard, on the 27th day of April, 1917, and signed on the same date,

Now the condition of the above obligation is such, That the above bound Godchaux Company, Incorporated, shall prosecute its said appeal, and shall satisfy whatever judgment may be rendered against it or that the same shall be satisfied by the proceeds of its estate, real or personal, if it be cast in the appeal; otherwise that the said Globe Indemnity Company shall be liable in its place.

GODCHAUX COMPANY, INCORPORATED,

(Signed) By CHARLES GODCHAUX, *President.*

GLOBE INDEMNITY COMPANY,

(Signed) By WILLIAM H. KLINESMITH,

Its Attorney in Fact. [SEAL.]

Signed, sealed and delivered in the presence of

(Signed) G. M. WALLACE.

" R. R. RAMOS.

Citation of Petition of Appeal Served on Albert Estopinal, Jr., Sheriff, and etc., and Return.

Filed May 14th, 1917.

STATE OF LOUISIANA:

Twenty-ninth Judicial District Court for the Parish of St. Bernard.

To Albert Estopinal, Jr., Sheriff and ex-Officio Tax Collector of the Parish of St. Bernard, Greeting:

Whereas, the Godchaux Company, Incorporated, has on the 5th day of May, 1917, filed in the office of the Clerk of the 29th Judicial District Court for the Parish of St. Bernard, a petition of Appeal from a certain final Judgment rendered in the said Court against them, which said appeal is returnable in the Supreme Court, for the

State aforesaid, on the Fourth day of June, 1917.

87 You Are, Therefore, Hereby Cited to appear in person or by Attorney, for the said Court, on the day last aforesaid, to answer the said Appeal.

Witness, the Honorable R. Emmet Hingle, Judge of the said Court, this 9th day of May, in the year of our Lord, One Thousand Nine Hundred and Seventeen.

(Signed)

W. D. ST. ALEXANDRE,
Dy. Clerk.

Return.

Rec. the within Citation & petition of appeal on the 12th day of May, 1917 & on the same day & date, Services were made by horeading a copy of said citation & petition of appeal to Albert Estopinal, Jr., She'ff, et als. in person.

(Signed)

FERDINAND BEL,
Dy. Sheff.

Citation of Petition of Appeal Served on the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District and Return.

Filed May 16th, 1917.

STATE OF LOUISIANA:

Twenty-ninth Judicial District Court for the Parish of St. Bernard.

To the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District Through Its Proper Officer, Greeting:

Whereas, the Godchaux Company, Incorporated, has on the 5th day of May, 1917, filed in the office of the Clerk of the 29th Judicial

District Court for the Parish of St. Bernard, a petition of Appeal from a certain final Judgment rendered in the said Court for the State aforesaid, on the Fourth day of June, 1917.

You Are Therefore Hereby Cited to appear in person or by Attorney, in the said Court, on the day last aforesaid, to answer the said Appeal.

Witness, the Honorable R. Emmet Hingle, Judge of the said Court, this 9th day of May, in the year of our Lord, One Thousand Nine Hundred and Seventeen.

(Signed)
[SEAL.]

W. D. ST. ALEXANDRE,
Dy. Clerk.

88

Return.

Received the within Citation & petition of appeal on the 12th day of May, 1917, and on the same day & date service *were* made by *horeding* a copy of said citation & petition of appeal to Albert Estopinal, President of said Board, in person at his domicile.

(Signed)

FERDINAND BEL,
Dy. Sheff.

Agreement as to Transcript.

Filed May 25th, 1917.

29th Judicial Dist. Court, Parish of St. Bernard, State of Louisiana.

No. 1051.

GODCHAUX Co., Inc.,

versus

ALBERT ESTOPINAL, JR., Sheriff.

Agreement as to Transcript.

It is hereby agreed between plaintiff and defendants that the records in the suits of Badger-Louisiana Land Company versus Albert Estopinal, Jr., Sheriff, etc., No. 1054, St. Malo Delta Farms versus Albert Estopinal, Jr., Sheriff, etc., No. 1053, and Doullut & Williams versus Albert Estopinal, Jr., Sheriff, etc., No. 1056, of the docket of the 29th Judicial District Court, Parish of St. Bernard, shall be omitted from the transcript, and the Clerk is instructed to act accordingly.

New Orleans, La., May 24, 1917.

(Signed)

FOSTER, MILLING, SAAL &
MILLING,

Attorney- for Plaintiff.

WM. WINANS WALL,

Attorney for Defendants.

Testimony and Notes of Evidence.

November 28th, 1916.

29th Judicial District Court, Parish of St. Bernard.

No. 1051.

GODCHAUX COMPANY, Inc.,

VS.

ALBERT ESTOPINAL, JR., Sheriff, et al.

Testimony of Messrs. Charles Godchaux, and H. C. Smith, witnesses for plaintiff, taken at the office of Foster, Milling, Saal & Milling, New Orleans, on the 25th day of November, 1916, subject to the following agreement:

Appearances:

Messrs. Foster, Milling, Saal and Milling (Mr. R. E. Milling and Mr. R. C. Milling present), representing the plaintiff.

Mr. William Winans Wall, representing the Sheriff and *ex-Officio* Tax Collector, defendant, and also appearing for N. H. Nunez, District Attorney and *ex-Officio* Attorney for the Drainage Board, by his request.

Mr. R. E. Milling: The evidence of Mr. Charles Godchaux and of Mr. H. C. Smith, is taken by consent, out of Court, to be used upon the trial of the cause, subject to all objections that can be urged against it and herein made.

90 Mr. CHARLES GODCHAUX, being duly sworn, on the part of plaintiff testifies as follows:

Direct examination.

By Mr. R. E. Milling:

Q. Mr. Godchaux, this is a case of Godchaux Company, Incorporated, against the Sheriff and Tax Collector of the Parish of St. Bernard and the Drainage Board of the Bayou aux Boeufs Drainage District, in which the Godchaux Company, Incorporated, enjoined the collection of a sixteen cents acreage tax levied against certain property situated in the Parish of St. Bernard, known as the Contreras Plantation.

Will you please state what your official position is with the Godchaux Company, Incorporated?

A. I am the President of the Godchaux Company, Incorporated, and in charge of its affairs.

Q. How long have you known the Contreras Plantation?

A. I have known it by it having been owned by our family for about forty years, I have known it by looking after the property since 1889.

Q. Then it belonged to your father before the firm of the Leon Godchaux Company?

A. It originally was owned by my father, Leon Godchaux, then sold to the Leon Godchaux Co., Limited, then sold to the Godchaux Company, Incorporated.

Q. During all that time was it cultivated as a sugar plantation, and if not, up to what time was it cultivated as a sugar plantation?

A. It was cultivated as a sugar plantation until some time in the 90's, the exact date I do not know. Up to that time it was in operation by the family of the Company. After we abandoned the place, we had it leased out to the United Railway and Trading Company for a few years, but for several years it has been abandoned entirely.

Q. It is not being cultivated now?

A. Not at all.

Q. Mr. Godchaux, what is the drainage of the plantation, towards what direction?

91 Mr. Wall: I object to all evidence on the question of benefits, because no such evidence can be received in the absence of a charge of fraud or palpable abuse on the part of the Legislative departments in imposing a tax or special assessment under the law, and the findings of the legislative department of the Government not being subject to review by the judiciary in that respect. This objection to apply to all testimony hereafter offered, without repetition.

A. The direction as far back as I can remember, of the property on both sides of the Bayou Terre aux Boeufs, is towards the rear.

Q. In draining towards the rear where was the water discharged?

A. Well, it went towards the prairie, and the prairie, I think, discharged into Lake Borgne.

Q. Up to the time the Bayou Terre aux Boeufs was dredged out was there any drainage along the Bayou?

A. Practically none; I think in some places you could walk over it.

Q. The Bayou Terre aux Boeufs was cut out or dredged out and a shell road built along there, I believe was dredged out of the three and six cents acreage tax?

A. We are not contesting the three and six cents tax, making a total of nine cents; we are contesting that tax because we believe the money was used and that the system of drainage which was supposed to have been put in would benefit the high land, and partly the low. We contested the sixteen cents acreage tax, for the reason that the system of drainage planned by that sixteen cents as it is planned, would absolutely do us no good whatever.

Q. In other words, the cutting out of the Bayou Terre aux Boeufs with the three and six cents acreage tax would have benefited it so that you could have turned your drainage into the Bayou Terre aux Boeufs that is, the high land drainage?

A. All lands that cannot go into Bayou Terre aux Boeufs cannot be drained except by a pumping system, which this plant in no way, shape or form was prepared for. The levees show that after the high lands are drained that there is no natural drainage for these low lands, except by pumps.

92 Cross-examination.

By Mr. Wall:

Q. Mr. Godchaux, did you pay sixteen cents acreage tax for 1912?

A. I think we did.

Q. 1913?

A. I think we did.

Q. And 1914?

A. I think we did.

Q. It was only in 1915 that you refused to pay?

A. For the reason that we were always under the impression that they were going to put up pumps. It was only upon investigating thoroughly we found that the system contemplated would with the money available not be sufficient, and therefore there was no use paying a tax from which we would get no benefit. We have always been very willing Mr. Wall, to pay any special tax. We paid the tax for the shell road; pay large taxes without any revenue, and will be glad to pay the tax if we got some benefit out of it. We believe in taxes and reclamation.

Q. Did you make any investigation of the proceedings of the Board, Mr. Godchaux, to find out whether any pumps were contemplated by the District in connection with the general system that they had outlined?

A. We investigated in a general way, and if I am not mistaken was advised that they were going as far as the funds would permit them. That the funds from this tax would not enable them to put in pumps.

Q. When you did investigate you found that your supposition that there would be pumps was erroneous, and then you declined to pay any further?

A. Yes, sir.

Q. In the meantime, while the bonds were being voted and put on the market and sold, and the proceeds expended on this system, you made no protest?

A. Not that I remember; no, sir.

By Mr. R. C. Milling:

Q. Mr. Godchaux, none of your family live in St. Bernard?

A. No, sir.

93 Mr. H. C. SMITH, being duly sworn, on the part of plaintiff, testified as follows:

By Mr. R. E. Milling:

Q. Mr. Smith, what is your profession?

A. Civil Engineer.

Q. How long have you been engaged as Civil Engineer—I mean, how long have you followed that profession?

A. Thirty some odd years.

Q. Have you ever had occasion to do any engineering work or other work that called you down to Bayou Terre aux Boeufs in the Parish of St. Bernard?

A. Yes, sir.

Q. Are you familiar with that country?

A. Yes, sir.

Q. How long have you been familiar with it?

A. Since eighteen seventy eight.

Q. Were you called on by Mr. Godchaux of the Godchaux Company, to run lines and levels on the Contreras Plantation to ascertain what proportion of that would drain by gravity?

A. Yes, sir.

Q. Did you do so?

A. Yes, sir.

Q. Did you make a map showing the high land area or that portion that would drain by gravity?

A. I have a system of levels run and made a map of the place.

Q. Will you please examine the map attached to the petition in this case now marked Plaintiff I, and state whether or not that map correctly shows the area that can be drained by gravity—that is susceptible of gravity drainage, and the area that may be leveed and pumped in order to be drained and reclaimed?

Mr. Wall: I object to all evidence on the question of benefits, because no such evidence can be received in the absence of a charge of fraud or pal-able abuse on the part of the Legislative department in imposing a tax or special assessment under the law, and the findings of the legislative department of the government not being subject to review by the judiciary in that respect.

94 This objection to apply to all testimony hereafter offered, without repetition.

A. Yes, sir; indicated on the map or blue print by dotted lines.

Q. By dotted lines?

A. Yes, sir.

Q. Well, now, what about the area behind those dotted lines on each side of the Bayou, as regard drainage; in what manner can it be drained?

A. By artificial means only.

Q. It is not susceptible of gravity drainage?

A. No, sir.

Q. Are you familiar with the drainage system that has been installed down in the Bayou Terre aux Boeufs Drainage District?

A. Well, partly.

Q. Were you ever an engineer upon the works?

A. Yes, sir.

Q. Well, what was the system first installed, or thought of, when

the three cents acreage tax was voted? What work was proposed to be done?

Mr. Wall: I object to this, on the ground that the best evidence of this is the proceedings of the Board of Commissioners.

A. The idea was to create one large drainage system, which is to be subdivided into units, and each unit into pumping districts, and to be drained by means of pumps.

Q. Well, then, when the three cents acreage tax was voted, what did they contemplate then; what work did they contemplate; they certainly did not expect to do very much?

A. No—

Mr. Wall: The objection above made is repeated to all of this testimony.

A. (continued). For the purpose of dredging Bayou Terre aux Boeufs and Bayou La Loutre.

Q. When they got into the work, they found then that a three cent tax was not sufficient for that; then they called an election and voted a six cents acreage tax, did they not?

A. Yes, sir.

Q. And with that they dredged out the Bayou Terre aux Boeufs, did they?

95 A. Yes, sir.

Q. Then, afterwards, what was contemplated to be done?

A. Well, I became a member of the Board of State Engineers at that time, and I left the service of the drainage board, and employed Mr. Frank T. Payne, I am not familiar with what they contemplated after I left them.

Q. Then what benefit has been derived by the Godchaux Company, Incorporated, to the Contreras Plantation by this digging out of the Bayou Terre aux Boeufs, if any?

A. You mean as a drainage proposition?

Q. As a drainage proposition; to those lands that must be leveed and pumped in order to be drained and reclaimed?

A. None.

Q. Mr. Smith, upon this map is shown a canal running from Shell Beach to the point "X. X." It is testified that there is a canal cut and the excavation placed on the lake side, or between the canal and the lake; would that be the proper way to build a levee around the lake, if you were going to keep out the pumped water and pumped out the interior?

Mr. Wall: This testimony is objected to, as a collateral attack upon a tax levied in accordance with law by a duly authorized subdivision of the State.

Q. The question is whether or not that canal should be on the inside of the pump area or on the outside?

A. My opinion is it would have to be on the inside, provided the levee was not too close to the lake.

Q. Well, why?

A. Because when you pumped your water down to get it off the land, you would reduce it three or four feet below its natural surface, and that would cause the lands to harden and solidify, and make a firm base for your levee; whereas, if you had a canal on the outside it would always remain full of water and be against the base of your levee.

Q. Well, isn't it a fact that you would have water against the base of your levee anyway on the lake side?

A. Only during high tide, for certain periods of the day, for a couple of hours.

96 Q. If you had your canal on the outside connected with the lake, would not the water run out of the canal in the same manner exactly?

A. Well, it never runs more than a few inches below your surface. Those lands are only a few inches above the lake level.

Q. Isn't it a fact, Mr. Smith, that if you were to cut a canal on the inside and put the levee on the edge of the lake, that your levee would show a great deal of leakage?

A. No, sir.

Q. It would not?

A. No, sir; not if you had it sufficiently far away from the lake, or had a sufficient berm.

Q. But all that area, other than the narrow fringe along the Bayou Terre aux Boeufs or Bayou La Loutre, has to be pumped in order to cultivate it, for it to derive any benefit from any kind of drainage?

A. Absolutely.

By Mr. R. C. Milling:

Q. Mr. Smith, Mr. Munding testified, as I understand it, that his canals are inside of the Levee and those canals are connected with Bayou Terre aux Boeufs, and these others, with Bayou La Loutre; now, if that is the way that those canals are actually constructed, won't the water level in the canals, if they are connected with Bayou Terre aux Boeufs and Bayou La Loutre, always remain the same as to tide level?

A. Sure.

Q. And in the event of high tide, won't those be overflowed?

A. Certainly.

Q. If the canals are cut off, leveed off so that they do not connect with Bayou Terre aux Boeufs and Bayou La Loutre, then they are no benefit to the drainage, are they?

A. Absolutely none; unless you pumped them.

Cross-examination.

By Mr. Wall:

Q. Mr. Smith, the three and six cents acreage tax was not sufficient to dig out Bayou La Loutre and Bayou Terre aux Boeufs as originally contemplated?

97 A. I do not remember just how far that went.

Q. It did not complete the work?

A. I do not think it did; that is my recollection.

Q. The idea of an engineer of the Board was that if this District were reclaimed by forming subdrainage districts; that general system of outlets for each subdrainage district was necessary?

A. Yes, sir; that was the idea, to form these units as the demand for them was made. As this country would be settled up, we began with unit one, and the upper portion; that was the idea of the conception.

Q. The land down there—the flat lands, have no possible value, except they are drained?

A. None. This general outlines was to protect that area from tidal overflow, so as to enable us to subdivide that into units, and take care of each unit as it came up.

Q. Each unit, of course, would present an independent engineering proposition?

A. And when the whole was completed, to make one comprehensive system.

Q. That was the idea?

A. Yes, sir; these units were to be worked so as when completed, one after the other, they would work into one general system.

Q. And these drainage canals would be used as an outfall canal?

A. Yes, sir.

By Mr. Milling:

Q. You could not have used the Bayou Terre aux Boeufs canal to carry off the water that had been pumped?

A. It is not practicable; it could be done. It is possible, but not probable.

Q. You would have to make it a great deal larger?

A. You would have to make your water run up hill, or dig your ditches to run into Bayou Terre aux Boeufs; that would close them off; if you did not, they would run back that way. So, I cannot see what service that would be at all as an outlet. It was never intended that the Bayou Terre Aux Boeufs was a benefit to the drainage of that country. It was merely a tributary of the Mississippi River; it was one of the deltas at that time; one of the mouths of the Mississippi River, and not a drainage for that country at all.

98 Q. In other words, the high lands built along the banks, was built by——

A. By the silt which was deposited by high water.

Q. Now, Mr. Smith, going back to the proposition of putting those levees on the outside of this area, especially along the banks of the lake Borgne say, it would, if you commence, say, on unit number one, nearest the Mississippi River, you would have to enclose that area inside of levees, would you not?

A. Yes, sir.

Q. And the only benefit to that area would be the levee that has been built on the front; that is, if your levee system had been completed as you spoke of?

A. Not on the front.

Q. I mean on the front of the lake?

A. Yes, sir.

Q. Well, now, suppose that levee had not been there, the only extra work that would be entailed on that unit, would be to build that levee on the lake front?

A. Yes, sir.

Q. Then if you dug the next unit, it would be built by enclosing it in levees?

A. Well, then you would have to run a side levee up to your high lands for each unit.

Q. That is what I say?

A. That would entail a great deal more expense.

Q. Unless the whole area was pumped at the same time, you would have to have side levees anyhow to each unit, or at least a large ditch?

A. Yes, sir; sure.

By Mr. Wall:

Q. Mr. Smith, when you get down to the Bayou La Loutre, the ridge along the Bayou is very narrow, isn't it, and not very high?

A. Yes, sir.

Q. Not very high?

A. No, sir.

Q. As a matter of fact, the expense of bringing an outlet canal for a unit; that is, a drainage canal to Bayou La Loutre, would not be very much increased by the ridge there—the actual drainage of that canal, would it?

99 A. Well, considerably.

Q. Would that be so, assuming that the ridge was only five hundred feet wide?

A. Well, of course, you would have to start with your ditches at least eighteen inches deep, and if your ridge along your bayou was three feet higher than back there, would make your ridge at that point four feet, and six inches deep, instead of beginning there at eighteen inches and getting less as you went back, because you would have the benefit of the fall of the land.

Q. But assuming that the maximum fall within one of these sub-drainage units would be a foot after you struck the level of the wet land and that the ridge was three feet high and five hundred feet wide, as testified to be the case in some cases we had, the cost of that outfall would not be very materially greater, no matter which way it was run, would it?

A. Well, it is just that much the width of the ditch would be increased.

Q. I mean that up to beginning of the high land, you would possibly have an increase of a foot?

A. Yes, sir.

Q. In the depth of your ditch?

A. And if you had slopes on your ditch of one and a half to one, for every foot that you went down, would necessitate three feet *that you went down, would necessitate three feet* additional for your ditch, and you would have to begin with at least an eighteen inch ditch; then if you dug them deep enough to drain back lands, the

water from the Bayou would naturally, when the tide rose, go into your ditches, instead of water, coming out of them.

Q. That would render the main artery of the subdrainage district somewhat more expensive of construction?

A. I should say so.

Q. But would not that be more than overcome by the location of the pumping plant on a canal that is navigable by small boats and accessible by a good road?

A. Of course, that is a matter of calculation; but off hand you do not think so.

Q. That would be an engineering proposition to determine in connection with the—it would be a matter of calculation, of off-setting one against the other, the accessibility against—

100 A. Because you would have lateral canals running up to the railroad; you could load you- oil, coal or supplies there, and take it back on flat boats to your pumping station at a small cost.

Q. What I am trying to get at, is this; that the location of the pumping plant for each unit in this general system, would be an independent engineering proposition that would have to be dealt with on the basis of calculation to be made when the pumping plant is to be located?

A. To a certain extent; yes.

By Mr. R. C. Milling:

Q. Mr. Smith, is the drainage on Contreras Plantation now from Bayou Terre aux Boeufs back to the Swamp, or is it into Bayou Terre aux Boeufs?

A. From the Bayou back.

By Mr. R. C. Milling:

Q. Do you know the difference in the height of the Bayou ridge and the low lands; how much higher the ridge is than the swamp?

A. At Contreras. I had level runs back as far as the water in the front; I cannot give you that off-hand, but I could furnish you that—something like three or four feet.

Mr. R. E. Milling: We file in evidence, in connection with Mr. Smith's evidence, the map attached to the petition, marked Plaintiff 1.

Mr. Wall: I offer this map, Marked D-1, testified to by Mr. Munding in his evidence.

101 29th Judicial District Court, Parish of St. Bernard, Louisiana.

No. 1051.

GODCHAUX COMPANY, Inc.,

v.

ALBERT ESTOPINAL, JR., Sheriff, et al.

Testimony of Mr. A. G. Mundinger, a witness for defendants, taken at the office of Messrs. Foster, Milling, Saal & Milling, New Orleans, on the 25th day of November, 1916, subject to the following agreement:

Filed Nov. 28th, 1916.

(Signed)

JAS. D. ST. ALEXANDRE, *Clerk*.

Appearances:

Messrs. Foster, Milling, Saal & Milling (Mr. R. E. Milling and Mr. R. C. Milling present), representing the plaintiff.

Mr. William Winans Wall, representing the Sheriff and ex-Officio Tax Collector, defendant, and also appearing for N. H. Nunez, District Attorney, and ex-Officio Attorney of the Drainage Board, by his request.

Mr. R. E. Milling: By agreement between the parties, the evidence of Mr. A. G. Mundinger is taken by consent out of Court, to be used upon the trial of the above styled and numbered cause, and the said evidence is subject to any objections urged against it, to be passed upon by the Court.

102 A. G. MUNGINDER, being duly sworn, on the part of the defendants, testifies as follows:

Direct examination.

By Mr. Wall:

Q. Mr. Mundiger, what is your business?

A. Civil engineer.

Q. Did you ever have any connection with the Bayou Terre aux Boeufs Drainage District?

A. Yes, sir. I was engineer for the Bayou Terre aux Boeufs Drainage District from 1909 to 1914.

Q. Are you familiar with the work that has been done in that District?

A. Yes, sir.

Q. Have you any map showing the work done?

A. Yes, sir.

(Witness produces the map marked "D-1.")

Q. Does this map show that work in a general way?

A. Yes, sir. In a general way this map shows the work done and the work contemplated.

Q. Will you describe the work that has been done in that District?

A. The work done in the District is shown on this map in red lines and the work proposed to be done was shown in yellow lines.

Mr. Milling: We object to him stating what work was proposed for the reason that the best evidence of such proposal is the resolution of the Board of Drainage Commissioners authorizing the work, or declaring the work is contemplated, accompanied by the evidence that funds were in hand with which to do the work.

Agreement: It is agreed that this objection shall stand as an objection to all evidence of similar character, without repetition.

Q. Why do you say that this work indicated in yellow was proposed to be done, Mr. Mundiger?

A. I was engineer of the Board at the time and this proposed work was laid out by myself with the approval of the Board.

Q. With the approval of the Board? I suppose the approval of the Board of State Engineers.

103 Mr. Milling: We object to that for the reason that approval of the Board of State Engineers is the best evidence of such approval and if, as a matter of fact, the engineer of the Board laid out certain work, I suppose that he made a report of same to the Drainage Board, together with maps, etc., with his recommendation, and said report, together with the accompanying resolution of the Board is the best evidence of whether or not such work was proposed.

Q. You were the engineer who prepared this map?

A. Yes, sir.

Q. And you are the engineer—You know of your own knowledge that they were submitted to the Board of State Engineers?

A. Yes, sir.

Q. And that on the approval of the Board of State Engineers, the work was ordered done by the Drainage District.

A. Yes, sir.

Mr. Milling: My objection stands to the above evidence. It is understood that it will be considered as an objection to all similar evidence.

Q. Mr. Mundiger, describe the character of this work that has been done.

A. All work that has been done is a canal ranging from thirty to fifty feet in width and from eight to ten feet in depth, with the levees in some instances on both sides and in others, on only one

side, where it is necessary. The earth excavated from the canals being used to form the levee.

Q. Now, what effect on the waters of the highlands in that District will those canals that have been excavated, have?

A. Why, it helps to take the water off quicker than it did before to some extent, by being open channels instead of sluggish channels.

Q. The result of that would be to lower the level of the rain water on the lands that are approximately at mean Gulf level?

A. It would lower the level of the rain water in that it would take it off quicker.

Q. Are these canals open to the Lake or is it contemplated that they should remain open to the lake always?

A. In most cases, yes; the Bayou Terre aux Boeufs is
104 dredged out to open water, as was also Bayou La Loutre.

Q. Was it the intention of the Board that these canals should ever be dammed and pumped out?

A. No. These were for outlets.

Q. Were they outlets?

A. Yes, sir.

Q. And they were to be leveed on either side.

A. Yes, sir.

Q. What could they be used for besides draining?

A. They can be used for navigation.

Mr. Wall: Subject to the objection that no testimony is admissible to prove lack of benefits alleged in petition in the absence of a charge of fraud or palpable abuse by the legislative department, the question of benefits being a legislative and not a judicial question, the following questions were asked:

Q. Of what benefit, Mr. Mundiger, would these canals that have been completed and those contemplated, be to the lands not susceptible of gravity drainage?

Mr. Milling: We object to that part of the question which asks the question as to what benefit these canals that are not completed would be to the gravity drainage—to the lands that are not susceptible of gravity drainage.

A. The completion of these canals and levees, that would include the properties—the levees protecting them from overflow waters and after installing pumps, the lands would be thoroughly drained—pumps and also necessary canals leading to the pumps.

Q. Would these canals be necessary in draining such lands by pumps and levees?

A. Absolutely; yes, sir. These canals would necessarily form part of an ultimate drainage scheme, for any portion of these lands.

Q. What is the character of those lands that are about tide elevation, down in St. Bernard Parish?

A. They are what we call prairie lands or marsh; cleared lands about the elevation of mean tide level and covered with grass.

Q. Can they be used for any purpose without being drained by levees and pumps.

A. Practically none.

Q. Covered by water most of the time?

A. Covered with water except at low tide.

105 Q. In order to drain them with levees and pumps, would a system of general canals be necessary?

A. Yes, sir.

Q. Why?

A. For outlets; so that the excavation there for levees protected against back water.

Q. The water couldn't be pumped from a particular unit of land to the property of another without increasing the servitude of drain?

A. We would have to have outlets for the different tracts of land.

Q. If a general system of canals were not provided by the District, then they would have to be provided by the various Subdrainage Districts that might be created in order to drain the land by levees and pumps?

A. Absolutely; yes, sir. We would have to have an outlet leading to the main bayous and Lake.

Q. Have you outlined the Contreras Plantation on this map?

A. Yes. It is shown on this map hatched with black ink—boundary hatched.

Q. Has that particular plantation been benefitted by the work already done?

A. Yes, sir.

Q. And would it be benefitted by the work proposed to be done?

A. It would be greatly benefitted by the proposed work completed.

Cross-examination.

By Mr. Milling:

The cross-examination of the witness is with full reservation of the objections to the evidence already introduced.

Q. You became the engineer of this Board in 1909?

A. Yes, sir.

Q. The Board was organized, according to its records, in 1905.

A. I think so.

Q. Now, who was the engineer in charge before you?

A. Mr. H. C. Smith was engineer at one time and then a Mr. Frank T. Payne.

Q. If I understand, the Drainage Board ordered an election and there was first voted a three cent acreage tax?

A. Yes, sir.

Q. Which was expended and then a six cent acreage tax, which was expended and then a sixteen cent acreage tax? Am I correct about that?

A. Yes, sir.

106 Q. Now, if I understand, the three and six cent acreage taxes had been paid and expended before you were called in as engineer?

A. I don't think that this last tax had been entirely expended.

I was working for Mr. Payne for a while and I don't remember exactly just as far as finances go.

Q. What work had been performed by the Board when you became its engineer, not under someone else, but when you became engineer in person?

A. There was work that had been done along the Bayou Terre aux Boeufs and along Bayou La Loutre.

Q. The Bayou Terre aux Boeufs had been cut down to Delacroix Island?

A. No, sir; not all the way.

Q. Mark on that map the point to which the Bayou Terre aux Boeufs had been dredged at the time you became engineer.

A. The work was done to Kenilworth going from the Mississippi River from Delacroix Island up to Florissant. However, there was afterwards some work done along this same line of levee and canal. There was also work done along Bayou LaLoutre between Yclosky and Hopedale. This also was afterwards gone over and deepened.

Q. When you became the engineer, what time did you say it was?

A. The records show that, but I don't remember the exact date.

Q. Was it 1909?

A. My recollection is it is 1909.

Q. Well, now, were you engineer of the Board at the time the last election was held down there, voting on the 16¢ acreage tax?

A. Yes, sir.

Q. Then, how much of the work had been completed at that time?

A. Had about completed the space between Kenilworth and Florissant and between Yclosky and Bayou Terre aux Boeufs.

Q. Then Bayou Terre aux Boeufs was completed at that time?

A. It was completed.

Q. And how much of Bayou LaLoutre had been completed at that time.

A. I cannot answer that question exactly because the work was pretty much scattered along the Bayou LaLoutre, just a continuation of this work.

Q. Had any portion of the canal on the lower side or south side of the Bayou Terre aux Boeufs from the Parish line out towards Kenilworth been completed?

A. No, sir. That was work done after the voting of the sixteen cent acreage tax.

107 Q. The Bayou Terre aux Boeufs had been completed.

A. Yes, sir.

Q. You have said that if those canals were completed, you would have run them up so as to take in the whole area, then that you would be able to pump out that area and drain it. Would that contemplate the pumping of the high as well as the low land?

A. It would contemplate the pumping of all the rainfall that did not get into the Bayou Terre aux Boeufs, which would practically mean the total land. It would really mean the total lands.

Q. You would have to permit openings into the Bayou Terre aux Boeufs, or such openings would have to be located, would they not?

A. If that system of drainage were installed and it was chosen to put the pumps on the back of the property next to the Lake.

Q. Then, up to the time that the Bayou Terre aux Boeufs was dredged out, there was little or no drainage through the Bayou itself?

A. All drainage had become poor in the Bayou Terre aux Boeufs on account of it being filled up.

Q. It is a fact that the Bayou Terre aux Boeufs is a Bayou that is really on top of the ridge; in other words, the land slopes from either side of the Bayou back to the low land?

A. Yes, sir.

Q. And that by cutting it out to the tide level, you would only get such drainage through the Bayou Terre aux Boeufs as already existed in the swamp below?

A. The level would be practically the same.

Q. Practically the same? And as a matter of course, if you had a low tide and heavy rains, the rain water would run out of the Bayou Terre aux Boeufs faster than out of the swamp, even if drained back into the swamp—if you had a low tide and heavy rains, and the drainage of the lands went into the Bayou Terre aux Boeufs, it would run off more rapidly through the Bayou Terre aux Boeufs than it would off the low lands behind them, if the drainage had been carried out that way.

A. Yes, sir.

Q. But if you had high tides, heavy winds, accompanied by heavy rain, then the swamp would take care of the drainage better than the Bayou Terre aux Boeufs, would it not?

A. Just about—it would make very little difference. The opening of the Bayou would probably have the effect of letting the tide water come up very fast if the Bayou were dredged, but the water seeks its level and the water would be just the same in one place as another.

Q. But I asked you that question on this theory; as the rising tide would have to come through the swamps, brush and the grass, it would reach the edge of the highlands not so rapidly as if it came up through the Bayou Terre aux Boeufs; would it not?

A. There would be very little difference.

Q. Then if you had ditches cut from these highlands into the Bayou and you had a heavy tide and winds accompanied by heavy rains, the effect would be to run the water from Bayou Terre aux Boeufs back on to the low lands; would it not?

A. Mr. Milling, I don't know exactly about that. It would probably have the same effect. The water would rise probably a little faster in the Bayou, but it would be very little difference and in the course of a few hours, the water in the swamps and the water in the canal, according to my judgment, would be the same.

Q. The canals that were out in the swamp, not meaning the canal dredged out—Bayou Terre aux Boeufs and Bayou La Loutre—are simply tide water canals; that is they stand full of water?

A. Yes, sir. They would continue to be tide level canals and would have no effect on the drainage whatever, except the levee protecting from the overflow and the pumps carrying off the water from the

low lands; in other words, those swamp canals are not intended for gravity drainage; they were only outlets for pumps and the earth excavated therefrom to be used for the levees.

Q. Therefore, these canals don't benefit the gravity drainage at all, so far as the gravity drainage is concerned?

A. No; they don't benefit the gravity drainage.

Q. Take the canal that you started along the shore of Lake Borgne, running from Shell Beach to the point marked "XX"; on which side of that canal is the dirt that was excavated, deposited? On the Lake side or on the land side?

A. The dirt was deposited on the Lake side.

Q. Leaving the canal on the inside?

A. Yes, sir.

109 Q. Well, Mr. Mundinger, if you were called upon now as an expert, to go there and prepare that area for leveeing and pumping instead of for gravity drainage, would you not fill up that canal?

Mr. Wall: I make this objection to all this testimony: It is objected that the practicability of a drainage scheme adopted by a Board of Commissioners of the Drainage District cannot be attacked in a suit to enjoin the collection of a tax; that the judgment of the Commission is not subject to review by a tax payer in such a suit. This objection applies to all this testimony along the same line.

Q. I asked you the question: Would you not fill up the canal and I asked you this question for this reason: that don't you know as an engineer that if you cut a canal at the base of the levee which already has water on the other side of it, as in this instance, that it would be almost impossible to maintain it against crayfish and muskrats?

A. No, sir. I would use that outlet to drain the water to the pumps.

Q. But don't you know that good engineering would prevent any canal from being at the base of the levee on the inside.

A. It might be true.

Q. In other words, don't you know in this country where we have crayfish and muskrats, where you put a hole on one side and a hole on the other, they make a hole through the levee.

A. Yes, sir; in a great many cases.

Q. You stated that the Contreras Plantation was benefitted by these canals. Now just explain that.

A. I think that it was just benefitted in the work that was contemplated, as this work was part of the work that would naturally be done.

Q. Couldn't the Contreras Plantation have been leveed and pumped without cutting out the Bayou Terre aux Boeufs?

A. I think it was to be used as one drainage scheme. It could possibly have been, with the exception that this canal would then have to have been dammed, which would be contrary to the natural outlets of the water, and—

Q. I understand; but you proposed to have one drainage unit on the north side and one on the south side of the Bayou Terre aux Boeufs—

A. Yes, sir.

110 Q. In other words, you didn't propose to have a drainage unit on the south side which extended across and took in any portion of the land on the north?

A. Yes; but I say, if you take the Contreras Plantation as one piece of land and form that into one drainage unit, then you would have to put a levee completely around it, which would cross the Bayou Terre aux Boeufs.

Q. But suppose you wanted to make two drainage districts of it?

A. The land in front would have to be protected, because the water in storm tides would come over this whole property and along the ridge of Bayou Terre aux Boeufs.

Q. Still that would necessitate—

A. Also that would necessitate a canal for outlets for your drainage, and the Bayou Terre aux Boeufs is a natural outlet for your drainage.

Q. There are innumerable bayous in that section, are they not? That is, in the swamp land?

A. In the swamp land there are some bayous.

Q. Is it not perfectly impracticable to use the Bayou Terre aux Boeufs as an outlet other than for gravity drainage?

A. It would be practicable to use the canals in the back of the land other than for pumping drainage.

Q. They would be used for outlets, would they not?

A. The canals in the back of the property were proposed as outlets.

Q. In other words, the advantage that you would have by having dredged the Bayou Terre aux Boeufs would be to give you a levee on the front there that would keep out, to some extent, the tide water?

A. It would keep out the tide water at storm tide and also, Bayou Terre aux Boeufs being a natural outlet, it was dredged out as a natural outlet for the waters from above.

Q. Now, Mr. Mundinger, you would not have any water in the Bayou Terre aux Boeufs unless you cut ditches into it, would you?

A. Yes, sir. This is a bayou that never was proposed to be closed, being open and is affected by the rise and fall of the tides and you can't consider that as one drainage unit because we were not contemplating any one particular spot in this drainage scheme; it was for the benefit of the whole district, and naturally Bayou Terre
111 aux Boeufs had to be dredged out as one of the natural outlets.

Q. But the fact is that the Bayou Terre aux Boeufs did not accommodate any drainage before it was dredged out. The Bayou towards Kenilworth down to Yclosky,—it was used very little for drainage and my idea is that the reason of it was because it has gradually filled up until before it was dredged, it was merely a slough.

A. Yes.

Q. The bottom of the Bayou before it was dredged, in a number of places was higher than the low lands in the swamp?

A. Yes, sir.

Q. Now, as I say, Bayou Terre aux Boeufs being upon a ridge and the lands being higher next to the Bayou and sloping back to the

swamps, then is it not perfectly evident that you couldn't get any drainage through the Bayou Terre aux Boeufs unless you cut ditches into it through the highlands?

A. That was the only way it was done.

Q. Is it not a fact that it is so impracticable as a gravity drainage canal that right up here at Poydras, near the Mississippi River, that the drainage is dammed off and runs back and pumped out instead of permitted to run out through the Bayou Terre aux Boeufs?

A. Yes, sir; on the Poydras Plaintation they put a dam across the upper end of the canal and diverted this drainage into their canals leading back to their pump.

Q. And pumped it out?

A. Yes, sir.

Q. Therefore, the benefit that was derived from dredging the Bayou Terre aux Boeufs was first and paramount the appearance of the country and the building of a high dump there upon which a splendid shell road has been built?

A. I will not say first and paramount; it was one of the benefits.

Q. And, of course, that shell road and dump would act as a levee?

A. Act as a levee against storm tides.

Q. Against storm tides; and that levee if the whole area was pumped, would of course be one of the levees of the pumped area?

A. Exactly.

Q. But, if you segregate the highlands from the lowlands and only embrace within the pumped area, such land as may be leveed and pumped in order to be drained and reclaimed, then there would be a small ridge on the Bayou Terre aux Boeufs that would be left, which could be drained by gravity?

A. Yes, sir.

112 Q. In order to do that, you would have to build a ditch or a canal and a levee between the highlands and the lowlands, in the rear adjoining it, if you intended to segregate it?

A. Not necessarily; you could just cut your ditches into the canal. I would say that a practical way is to do it this way.

Q. Then, if you drained it to the rear, the only feasible way of doing that, if you had already drained the lowlands, would be to pump the whole area?

A. If it was closed in the levee with a pumping system, the feasible way would be to let the water go back to the pumps.

Q. If the Drainage District decided that it did not want to pump the entire area, but wanted to drain those lands susceptible of gravity drainage by gravity, then would it not be necessary to divide the high lands and the low lands by a panel ditch or a small levee?

A. Not necessarily. As I said before, the ditches would be just cut lateral to the bayou; also the practical way would be to cut a back ditch.

Q. And by cutting the back ditches, then you would cut ditches perpendicularly into the bayou, which, of course, would take care of the gravity drainage?

A. Yes, sir.

Q. Well, now if that system was even installed, would it not be

necessary to close those openings into the Bayou Terre-aux-Boeufs by flood gates?

A. That would be necessary in the case of storm tides.

Q. Because if you did not do so—

A. The storm tides would come through.

Q. The storm tides would come up through the Bayou Terre aux Boeufs and back through the prairie and flood the high land, would they not?

A. Yes, sir.

Q. Now, suppose that you were to take the area bordering on Lake Borgne and proposed to levee and pump that area, would you not locate your pumps on the lake itself?

A. If I was in charge of one of those subdrainage districts, I would most likely locate the pumps on Lake Borgne. I think that would be the proper place for them.

113 Q. Then, of course, you could install both gravity and artificial drainage in that same area between Lake Borgne and the Bayou Terre aux Boeufs, if the Commission so desired?

A. Yes, it could be done.

Q. Well, now Mr. Munding, the map that you have presented marked D-1 is a map, you say, of the district, but is it not a fact that there are numerous small bayous throughout that swampy area or low land area shown upon the map, which bayous are not evidenced upon the map?

A. There are possibly a number of bayous. This small map was compiled from the Government surveys, and all the small bayous are not shown.

Q. Are you acquainted with the location of the Contreras Plantation?

A. Yes, sir.

Q. Is it in cultivation?

A. Not at present.

Q. How long since the cultivation has been abandoned?

A. I don't remember whether it was in cultivation when I first went there or not; that property along there was all in cultivation, the high lands of St. Mary and Olivier, but I don't remember whether Contreras was in cultivation at that time or not.

Q. In order to refresh your memory, don't you know that Kenilworth was cultivating Kenilworth, St. Mary, Olivier, Magnolia and Contreras plantations?

A. Well, my memory is not clear on that point; it has been several years ago.

Q. They were in cultivation at the time the drainage was installed, were they not; on this plantation?

A. On this plantation, and if Contreras was included in that, it was also.

Q. The fact is, all those plantations are not now cultivated, isn't that a fact?

A. Some of them are not. I don't know just which ones are not; I have not been in that immediate territory for the last year or two.

Q. Then you haven't made any actual survey lately?

A. Not lately; no.

Q. Notwithstanding the drainage system, the fact is that all those plantations—practically all the plantations along the bayou, that were in cultivation prior to the inauguration of the drainage system, are now abandoned as agricultural propositions?

Mr. Wall: Objected to as irrelevant.

A. Did you put the question, do I know it to be a fact?

Q. Yes, sir.

A. I think that some of them had been abandoned as I say, but I do not know just exactly which ones; I do not know the cause of having abandoned these properties.

Q. Then, if I understand you with reference to the benefit derived, say, by the Contreras Plantation from whatever work has been done there, is not that it has drained that plantation any more successfully than it was drained before, but that it has given a front canal there or levee that would keep out the storm water?

A. I say that is one of the benefits; then it can also be used as gravity drainage if they wanted to use it as such, and it is part of a complete drainage system. It is a part that would have to be dug as a complete drainage system on the plantation.

Q. Well, then, the only lands that would be actually benefitted by the drainage thus inaugurated would be the high lands on the bayou front?

A. Well, it depends on how you judge the benefit. I would judge that it is benefitted in so far as it is part of the canal system that would have to be installed to complete the whole system. It is just that much done towards the complete drainage system.

Q. Yes, but what I speak of is, whether or not this system of drainage in any manner benefitted the drainage of those plantations other than the high lands?

A. Mr. Milling, I don't exactly understand. I do not see how I can answer it in any other way. It is only benefitted in this way: that the opening of this canal does not benefit the drainage of the back land in its present condition; does not benefit the drainage, but it benefits the lands in so far as it is a part of the whole drainage system. It would be necessary to dig this canal to complete your drainage system.

Q. Why, Mr. Mundinger, don't you know as a matter of fact that you could have commenced a levee anywhere—don't you know you could have built a levee around the front of Lake Borgne here to any point you desired, then run back to the edge of the high land and followed the high land all the way round until you came back to the point on Lake Borgne, and had an area there that could have been pumped and successfully put in cultivation, without regard to whether you dredged the Bayou Terre aux Boeufs or not?

A. That could be done on this particular land, but these canals and levees were built for the benefit of the whole district. It was taken as a whole, and this is a part of the system of the drainage for

the whole district. If that work were done, it would be done simply on this one particular property.

Q. Would you do the very same thing below Shell Beach?

A. Yes, sir, Mr. Milling, but if the Drainage Board would try to build a levee around each man's property, you would have an endless job. You cannot possibly do that.

Q. Isn't the feasible reclamation unit about five thousand acres?

A. That is about right; yes, sir; but you have to have some general scheme in a big area like that for your outlets.

Q. But as far as the Bayou Terre aux Boeufs being used as an outlet for anything other than the gravity drained water, if you would segregate the pumped area from that area that is drained by gravity, could you use it as an outlet?

A. Mr. Milling, you are speaking of this one plantation.

Q. No, I am not; I am speaking of any portion of the drainage district.

A. Well, I just answer it this way: that the Bayou Terre aux Boeufs is a natural stream and a natural outlet, and this was one of the natural outlets in the general scheme of the district to leave open as an outlet for these different subdistricts.

Q. Yes, but the law says that those lands that must be leveed and pumped in order to be drained and reclaimed are to be taxed in a certain manner. Now, if you proposed to take the high lands for the purpose of draining them separate from a reclamation proposition or a pumping proposition, then the benefit would be apparent to the high land by dredging out the Bayou Terre aux Boeufs, 116 would it not?

Mr. Wall: Objected to; that question is not a proper question to be propounded to the witness, but involves a law of the case that has been contested by the defendants.

A. Mr. Milling, I really prefer to answer that question in this way. You ask me, that the only benefit then is to the high land, is that the idea?

Q. Yes. If you do not understand the question, I will repeat it. Suppose that you were to segregate the low lands from the high lands for the purpose of leveeing and pumping the low lands, and you desired to drain the high lands by gravity, then the only outlet for the high lands when being thus segregated, would be the Bayou Terre aux Boeufs?

A. The only outlet for the high lands would be the Bayou Terre aux Boeufs.

Q. And it would not be an outlet for the low lands—the pumped area?

A. Not unless you chose to put it through that way. The feasible way would be to drain it out the other way, I think.

Q. If, however, you treated all the lands as being lands that must be leveed and pumped, then I suppose that you could cut a canal through those high lands up to within a short distance of Bayou Terre aux Boeufs, and locate your pumping plant there?

A. Yes, sir.

Q. But my question contemplated the segregation of those lands that must be leveed and pumped from the lands that drained by gravity?

A. Well, I have always contemplated and figured on this as complete units to be used as a levee, outlet for the property, and also a levee to protect against the high water, and then in that case this would form a part of the levee system around the property. I don't think it is practical to segregate those lands myself.

Q. Well, it might prove more expensive; it is practical though, isn't it?

A. It is possible, but I don't think practical.

Q. Well, such being the case, how much tax per acre would you have to impose on those lands in order to carry on the drainage by leveeing and pumping?

117 A. I could not answer that question, Mr. Milling, unless I would make an estimate of it.

Q. Well, you know that no lands have been leveed and pumped in the country in this section for anything like a dollar an acre, have they?

A. Oh, it would cost more than that; yes, sir.

Q. Cost something like \$1.50 or \$2.00 per acre?

A. Probably so.

Q. In other words, you would have to have a tax of somewhere from \$2.00 to \$2.50 per acre funded into bonds to run for thirty or forty years, would you not?

A. Yes, to completely drain it, by pumping the water, cutting lateral ditches, reservoirs, canals, installing pumps, etc.

Q. It would be utterly impossible or impracticable to attempt to drain it on a fifty cents acreage tax?

A. To complete the drainage, it would be.

Q. In other words, you might go there and spend fifty cents an acre upon those lands that are not susceptible of gravity drainage, and you would still not be able to realize any revenue from them in the way of cultivating them?

A. The marsh lands would not be tillable unless *they* were lateral ditches, canals and reservoirs built, and a pump installed.

Q. In other words, unless you spend more than fifty cents an acre—

A. It would cost more than fifty cents an acre.

By Mr. R. C. Milling:

Q. What I want to find out is where are the limits of the drainage district?

A. I think you could better get that from the Board members. I was not instrumental in forming the district. The district was formed when I was employed, and I was not interested any farther than the actual location of canals, etc.

Q. Well, where are the limits up here?

A. I am not positive; up on Contreras plantation.

Q. Now, let me ask you this, Mr. Mundinger: if you completed your system here as outlined—as I understand it, the system is to

run from point XX on around to within the forty arpents line and the Mississippi River and the canal and the levee, and then complete the line on the South of Contreras Plantation on down to Lake Delery, and then down to Bayou Terre aux Boeufs, and then quit, would that in any manner benefit the Contreras Plantation?

A. That would not complete the drainage.

Q. I am not asking that. Suppose you would quit right there when you completed your proposed system?

A. You ask me, if that would benefit the Contreras plantation? I cannot answer that question, except to explain it. It would not drain it, but it would certainly benefit it to have those canals and levees all dug out; then you could go ahead with just a small amount of gutter work and complete the drainage.

Q. Here is my question: You have laid out a proposed system which you figured on doing for this district, and that proposed system does not include anything more than shown on this map, with the red which is completed and the yellow which is proposed, that is all you intend to do according to your proposed plan; I ask you this: if you did that and quit, and did nothing else, would the drainage of Contreras Plantation in the least bit be benefitted?

A. Would the drainage be benefitted? No.

Q. As a matter of fact, would you not levee — of the Contreras Plantation that it absolutely could not drain. Even the high lands could not drain, unless you changed the drainage and run it into Bayou Terre aux Boeufs?

A. With those canals and levees dug, it would not help the drainage; the drainage would be blocked until the work is completed. I would have to explain this for the answer to be intelligent. This work was only contemplated to aid in the forming of these different subdrainage districts. The drainage of the low lands would not be completed in any instance unless these subdrainage districts were formed, the canals and the pumps installed.

Q. Let me ask you this question: All the drainage now on Contreras Plantation is from the Bayou back to the swamp, isn't it?

A. I don't know.

Q. Isn't that the situation on all those plantations now?

A. Not all of them.

119 Q. Isn't that the situation on Contreras?

A. I am not certain.

Q. Assuming that to be a fact; that is, at the present time that the system of drainage on Contreras Plantation is from Bayou Terre aux Boeufs back to the swamp, if you complete your system and build these levees and canals that you mention, some of which are completed—are shown upon the map in red and the proposed system in yellow, why you would then simply block the whole drainage of the plantation on both sides of the Bayou, would you not?

A. Yes, sir; there would have to be a subdrainage—

Q. I am not speaking of doing anything else. If you complete the proposed system as outlined on this map, why then you block en-

tirely the drainage of Contreras Plantation on both sides of the Bayou, don't you—both high lands and low lands?

A. The drainage on the low lands would be blocked, but the high lands would have the opening of Bayou Terre aux Boeufs.

Q. Assuming that the drainage as presently installed on Contreras Plantation is from the Bayou Terre aux Boeufs back into the swamps—assuming that to be a fact—if you completed your proposed system and did nothing else—I mean the system shown on your map, and did nothing else, then you absolutely block the drainage on both sides of the Bayou, don't you?

A. Yes; it would really be blocked off, but these swamp lands are extensive, and the water would drain back into these swamps, the same as it does now.

Q. Well, when the swamps filled up, there would be no drainage at all?

A. There would practically be no drainage.

Q. And that would absolutely ruin the drainage of the high lands, unless they changed their whole system of drainage at the present time and ran their water into Bayou Terre aux Boeufs?

A. I agree with you, Mr. Milling, but that question cannot be answered intelligently without further—

Q. What I am trying to do is to keep you to this proposed system.

Now, when your swamps filled up, it would not only be necessary to change your drainage into Bayou Terre aux Boeufs, but it would be further necessary to levee against that swamp water in order to protect your high land drainage, would it not?

A. It depends how high the swamp would rise, and that would be a very difficult calculation—to figure that area and the evaporation of this water in the swamps, etc. It would be a pretty hard matter to tell just what would happen to the drainage of the high lands into this enormous swamp.

By Mr. Milling:

Q. But the fact is when you dug a pond, or formed a pond by building levees, if you will just let it alone in this country, it will fill up in five or six years?

A. Well, that is only in cases where the water is full of silt.

Q. I don't mean fill up with silt; I mean fill up with water?

A. Oh, yes.

By Mr. R. C. Milling:

Q. Mr. Munding, we will go to your further scheme that you speak of; now, that would not be gravity drainage, would it?

A. The further scheme would not be gravity drainage; it would be absolutely a pumping scheme.

Q. Then, as a matter of fact, under the Constitution of this State, you could not levee taxes against this land that you proposed to include in your subdrainage district without a petition of two-thirds of the property owners. Why under your system, if two-thirds of the property owners did not decide to tax themselves in order to complete

your drainage system, why the drainage on Contreras Plantation would be simply so that you could not drain it at all; that would be — situation, wouldn't it?

A. Oh, I see what you mean is that if this part was done and then the subdrainage district was not formed; why that would be the case.

Q. That would be the situation?

A. Yes.

121 Redirection examination.

By Mr. Wall:

Q. Mr. Mundinger, as an engineer, do you consider a general system of canals, such as have been outlined in this district, necessary to the reclamation of this district?

A. Absolutely.

Q. By forming into subdrainage districts and pumping the water out?

A. Absolutely.

Q. Now, this section of the country from Contreras Plantation down, with the exception of the ridges along these different bayous, is practically flat, isn't it?

A. Yes, sir.

Q. What would be the variation in elevation—just generally speaking—of that low land?

A. I think it would be within a foot.

Q. Within a foot?

A. Yes, sir.

Q. That difference in variation would — be of any influence as an engineering proposition in the direction to which your drainage might be pumped?

A. No, sir.

Q. Is it not a fact that accessibility is considered one of the prime factors in the location of a pumping plant?

A. Yes, sir; absolutely.

Q. Do you know whether there are roads along the Bayou Terre aux Boeufs?

A. Yes, sir; there is a road all along there; a road and a railway running out to Shell Beach.

Q. As a matter of fact, considering the accessibility and considering the small variation in elevation, would not the logical location for pumping plants, where the fall of the water would not be too great be on those roads and bayous?

A. Mr. Wall, I answered that question awhile ago; but as I said, I answered with reservation, because you ask me a question there to decide where I would locate a pumping plant in a subdistrict, for me to off-hand locate it. There would be so many things to be taken into consideration. I don't know exactly where I would locate it.

122 Q. Each subdrainage district would present a separate engineering proposition?

A. Absolutely; yes, sir.

Q. And in the location of the pump, of course, accessibility would be a very important factor?

A. A very important feature; yes, sir. To locate a pump on any subdrainage district, that would be one feature, and, of course, the natural outlets would be another, or the outlets that you were to use.

Q. And if it should develop that these pumps should be to a very large extent located on Bayou Terre aux Boeufs, it would mean that that Bayou would be of the utmost service in this general system?

A. Absolutely; yes, sir.

Q. Take Contreras Plantation, with a levee in the rear on each side of the Bayou Terre aux Boeufs, and the drainage directed into Bayou Terre aux Boeufs simply as a gravity proposition, would it be better than it was formerly, or worse?

A. I think it would be better.

Q. The water would pass more freely in and out of Bayou Terre aux Boeufs?

A. Yes, sir.

Q. While it would come up quickly, it would also go off quickly?

A. Yes, sir.

Q. If the water is allowed to come in from the lake at high tide and find its way out, why the flow is very much impeded and slower, isn't it? In coming in and going out?

A. Yes, until it was dredged out.

Q. And it means a longer submerging?

A. Yes, sir.

Q. In the event of progressing with the drainage of this entire district by subdrainage districts, would not this general system be just so much in the accomplishment of the ultimate drainage of the district as a whole?

A. That was the idea of this scheme of drainage.

Q. In other words, this is a foundation upon which the only practical complete drainage scheme of this district could be based?

123 A. Yes, sir; that was figured to be a foundation to form the different subdrainage districts. This work was to be used as part for each subdrainage district.

Q. The only possible value that these wet lands down there could have would be as drained tillable lands, would it not?

A. Yes, sir.

Recross-examination.

By Mr. R. E. Milling:

Q. How long is the Bayou Terre aux Boeufs?

A. It is dredged about twenty miles, and into open water, and I think it is about possibly twenty miles further to the Gulf; I do not know exactly.

Q. How wide is it?

A. Why, it ranges; from the canal at the upper end, it was just practically a slough, and we dredged it thirty feet wide. At the lower end, it was dredged to the width of fifty feet. It widens out as it continues to the Gulf.

Q. Don't you know as an engineering and as a practical proposition, that if you were to complete your levee system by *by* building the same along Lake Borgne and on near the Mississippi River, then your levee system on either side of the Bayou Terre aux Boeufs thereby formed an area that would hold the water that run into it, and that to drain it into Bayou Terre aux Boeufs, that the Bayou Terre aux Boeufs could not take it off with anything like the rapidity that it gets out through the swamp into the lake? Now, don't you know that Bayou Terre aux Boeufs is not large enough to accommodate this amount of drainage?

A. This drainage you will notice on this map just below Contreras there is two outlets; that a canal has been dug from Bayou Terre aux Boeufs joining the Bayou La Loutre, and that would increase that carrying capacity double.

Q. But you say that is the way to get rid of that water, to bring it all back to the Bayou Terre aux Boeufs?

A. Just as I said awhile ago, it is a problem that would have 124 to be taken up and considered in numerous points.

Q. Well, now, did you mean that the high lands along the Bayou Terre aux Boeufs, did not vary more than a foot than the lands in the rear?

A. I mean that the low lands, what we call prairie, would vary less than a foot.

Q. Then, what is the difference in the elevation of the high lands facing the Bayou Terre aux Boeufs and the low lands in the rear?

A. Well, that ranges from two or three feet to five feet.

Q. And if you were to locate a pumping plant along the Bayou Terre aux Boeufs, you would have to dig through that ridge to locate your pumping plant, and force the water falling upon those lands back into the pumped area?

A. The canal bottom would have to have a fall towards the pumping plant, wherever it was located.

Q. It would be more expensive, dredging?

A. Yes, sir.

Q. And in fact, it is not done that way?

A. That is what I say; there are so many problems, Mr. Milling, that you have to figure; I do not know where that pumping plant would be located in a subdistrict formed that way. You would put your pumping plant on the low land, if possible.

Q. Don't you know it would not be, wherever you put it—don't you know it would not be at Bayou Terre aux Boeufs?

A. Just off hand, I don't think it would.

125 29th Judicial District Court, Parish of St. Bernard, La.

No. 1051.

THE GODCHAUX COMPANY, Inc.,

vs.

ALBERT ESTOPINAL, JR., Sheriff.

Note of evidence taken on the trial of the above styled and numbered cause, in open court, before the Hon. R. Emmet Hingle, Judge presiding, on November 28th, 1916.

Appearances:

Messrs. Foster, Milling, Saal & Milling, representing the plaintiff.

Mr. W. W. Wall, representing the defendant Albert Estopinal, Sheriff.

Mr. N. H. Nunez, representing the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District.

Mr. Wall: It is admitted that the Sheriff would advertise and sell the property for the 16 cent acreage tax levied by the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District for the year 1916, unless he were enjoined from so doing.

Mr. Milling: We offer, file and introduce in evidence, the testimony of Mr. Charles Godechaux and Mr. H. C. Smith, taken in the City of New Orleans on the 25th of November, 1916, and in connection with that testimony we—

Mr. Wall: All of the objections to testimony made at the time said testimony was taken by consent, are especially reserved and renewed.

The Court: The Court refers the objections to the merit.

Mr. Milling: We offer, file and introduce in evidence, the plat attached to plaintiff's petition, which is marked "Plaintiff 1."

126 Mr. Milling: We offer, introduce and file in evidence a copy of the assessment of the Godchaux Company, Inc., for the year 1915, certified copy to be furnished; this being introduced simply for the purpose of attacking it.

It is admitted that the Godchaux Company, Inc., has paid all taxes assessed against this property, with the exception of the 16 cent acreage tax on the property described in its petition, which tax is involved in this suit.

Mr. Milling: That's our case, your Honor.

Defendant's Evidence.

Mr. Wall: Counsel for defendant introduces and files in evidence the testimony of A. G. Mundinger, subject to the objections recorded at the time of taking said testimony, by both parties; all of which objections are referred by the Court to the effect.

The Court: The same ruling.

Mr. Wall: In connection with the testimony, we offer the map marked "D-1" testified to by Mr. Mundinger.

Mr. Milling: In connection with this testimony, I want to urge some general objections which may apply to all. We object to any and all testimony having reference to the taxation of any lands other than the lands in controversy here, or the levying and collecting of any other acreage taxes than the 16 cent acreage tax in controversy in this case. We further object to any testimony as to the bonds of the Bayou Terre aux Boeufs Drainage District, 127 whether sold or unsold, or any testimony having reference to defalcation on said bonds, for the reason that the controversy in this case is the validity vel non of the tax, and there is no attack being made on the bonds or the bond issue.

The Court: The Court refers this objection also to the effect.

Mr. Wall: Subject to the above objection, the following admissions are made:

It is admitted that the 3 cent, 6 cent and 16 cent acreage tax was voted at different times in the Bayou Terre aux Boeufs Drainage District, as set out in the defendant's answer. That all of these taxes were levied and paid without protest, until the tax of 1915, when the 3 cent and 6 cent acreage taxes were paid, and payment of the 16 cent acreage tax was refused by the plaintiff.

It is admitted that all elections were promulgated, as set forth in defendant's answer.

It is admitted that Mr. Adam Estopinal, President of the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District, if present, would swear that all of the canals outlined in red on the map "D-1" have been constructed, and that the canals in yellow are canals which the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District proposed to construct at the time the drainage scheme of the district was conceived, the whole to constitute the general scheme of outlet canals for the entire district; that the general scheme of outlet canals is necessary to the drainage of the district as a whole, and that they would be beneficial; it being the intention of the Board of Commissioners that the canals outlined should serve as outfalls into which the drainage from sub-drainage districts that might hereafter be organized could be pumped. That of 128 the \$500,000.00 bond issue, into which the 16 cent tax was funded, the Board now has on hand forty odd thousand dollars of bonds unsold. That the witness is not an engineer but is Superintendent of Roads in the Parish of St. Bernard, and is not testifying as an expert witness.

That if the property owners in the District who are now contesting the tax on lands of like character with that involved in this suit should prevail, there will be a default in the payment of interest and the bonds of all issues issued by the District, although there will be no default in the event that the land in controversy in this suit only were eliminated.

That the \$40,000.00 remaining in the hands of the Board would

not be sufficient to install drainage throughout the District by levees and pumps.

It is admitted that Mr. Wallace Nunez would swear that there are forty odd thousand dollars of the \$500,000.00 issue, being the issue into which the 16 cent tax was funded, on hand. That if the property owners who are now contesting the tax on lands in the District of like character with that involved in this suit should prevail, there would be a default in the payment of interest and bonds on all issues issued by the Bayou Terre aux Boeufs Drainage District, although there would be no default if only the lands of the plaintiff in this suit should escape payment of the tax.

Mr. Wall: Counsel for defendant produces, offers and files in evidence, certified copy of all proceedings leading to the issue of \$500,000.00 of bonds by the Bayou Terre aux Boeufs Drainage District, voted January 10, 1911, same being already on file in the Supreme Court of the State, in suit No. 19387; and it is agreed that in the event of appeal this transcript may be used in connection therewith.

(NOTE.)—For "Proceedings leading to the issue of \$500,000 bonds," see page 131 of this transcript.

129 Mr. Wall: We offer in evidence the proceedings of the Board of Drainage Commissioners (copy to be supplied), showing the holding of the election ratifying the 3 and 6 cent taxes and imposing the 16 cent tax, held in 1912; the canvas of the election ordering the result promulgated, and the levy of the 16 cent tax for the year 1912 and subsequent years; said proceedings referring to the second and last elections held in the Bayou Terre aux Boeufs Drainage District.

Mr. Milling: These two offers are objected to insofar as the bonds are concerned, as the bonds are not in controversy, or attacked.

The Court: The Court makes the same ruling.

Mr. Wall: We offer in evidence the proceedings of the Board of Commissioners, funding the 16 cent tax into an issue of \$500,000.00 of bonds.

We offer in evidence the records in the suits of Badger-Louisiana Land Company vs. Albert Estopinal, Jr., et als., No. 1054 of the docket of the 29th Judicial District Court for the Parish of St. Bernard; suit of the St. Malo Delta Farms vs. Albert Estopinal, Jr., Sheriff, et als., No. 1053; the suit of Doullut & Williams vs. Albert Estopinal, Jr., Sheriff, et als., No. — of the docket of the 29th Judicial District Court of the Parish of St. Bernard.

Mr. Milling: We object to these suits, on the ground, first, that they are *res inter alius acta*; and, further, that these suits seek to enjoin other taxes than the one involved here.

The Court: What is the object of the offer?

Mr. Wall: To show to what extent this tax is being attacked. Adam Estopinal and Wallace Nunez testified if the other suits pending were successful, the bonds would be in default.

The Court: Limiting the purpose of the offer to that alone, the Court permits it to be filed.

No. 1051.

THE GODCHAUX Co., Inc.,

vs.

ALBERT ESTOPINAL, JR., Shff., et als.

Note of Evidence of plaintiff taken at trial Nov. 28th, 1916.
Filed Nov. 28th, 1916.

(Signed)

JAS. D. ST. ALEXANDRE, *Clk.*

130 STATE OF LOUISIANA:

29th Judicial District Court for the Parish of St. Bernard.

I, Jas. D. St. Alexandre, Clerk of the 29th Judicial District Court for the Parish of St. Bernard, do hereby certify that the foregoing One Hundred and twenty-nine (129) pages do contain a true, correct and complete transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the cause wherein Godchaux Company, Inc., is plaintiff and Albert Estopinal, Jr., Sheriff, et als., are defendants instituted in this Court and now in the records thereof under the No. 1051 of the docket, Honorable R. Emmet Hingle, Judge.

Proceedings leading to the issue of \$500,000, Bonds Bayou Terre-aux-Boeufs Drainage District, Voted January 10th, 1911, Filed November 28th, 1916, Forwarded with Transcript.

Transcript made up in accordance with Agreement of Counsel, Filed May 25th, 1917, and copied on page Eighty-eight of this Transcript.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the Parish of St. Bernard, on this 25th day of May in the year of our Lord, one thousand nine hundred and seventeen and in the one hundred and forty-first year of the Independence of the United States of America.

[The Seal of the Clerk of the Parish of St. Bernard, State of Louisiana.]

(Signed)

JAS. D. ST. ALEXANDRE, *Clerk.*

Filed Nov. 28, 1911. (Signed) J. McCormick.

Proceedings Leading to the Issue of \$500,000.00 Bonds, Bayou Terre aux Boeufs Drainage District, Voted January 10th, 1911.

No. 1051.

Filed in Evidence by Defendant on 28th Nov., 1916, in Suit No. 1051. Godchaux Co., Inc., vs. Albert Estopinal, Jr., Sheriff, et al. (Signed) Jas. D. St. Alexandre, Clk.

Supreme Court of Louisiana.

No. 19387.

Filed April 10th, 1912. (Signed) Paul E. Mortimer, Clerk.

The Board of Commissioners for the Bayou Terre-aux-Boeufs Drain-District, met this day in Special Session with the following members present: C. Verret, Pres.; Commissioners Gutierrez, Estopinal and Messa.

It was on motion of Com. Gutierrez, duly seconded that the minutes of preceding meeting as read be adopted.

Resolution by Adam Estopinal, seconded by Frank Messa.

Whereas, the Bayou Terre-aux-Boeufs Drainage District was organized by ordinance of the Police Jury of the Parish of St. Bernard of date the 6th of July, 1903; and,

Whereas, since the organization of said Drainage District, the laws relative to Drainage District have been amended by the adoption of an amendment to the State Constitution pursuant to the provisions of Act #197 of the Legislature of 1910, proposing an amendment to Article 281 of the Constitution of 1898; and

Whereas, said proposed amendment was duly ratified by the electors of the State of Louisiana, at the election held on the 8th day of November, 1910, which ratification has been duly made known by the proclamation of the Governor of the State of Louisiana; and

Whereas, The Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District desiring to avail itself of the right to re-organize and to avail itself of the conditions of Article 281 of the Constitution of this State as amended therefor-

Be It Resolved: That this Board do hereby request the Police Jury of the Parish of St. Bernard to organize the said Drainage District in conformity with the terms of Article 281 of the Constitution of the State of Louisiana, as amended in 1910, in order that this Board may carry out and complete the drainage and reclamation work necessary for this District at the earliest possible date.

This resolution having been submitted to the vote of the Board was carried unanimously.

On motion of Com. Estopinal, duly seconded by Com. Gutierrez, the Secretary was instructed to appear before the Police Jury and offer the above resolution duly adopted.

133 I hereby certify the foregoing to be a true and correct copy of the Minutes of the Meeting of the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District of date November 22nd, 1910.

BEN. F. ESTOPINAL, *Secretary*.

134 *Proceedings of the Police Jury.*

Present: L. Nuney, Seb. Roy, Rene Estopinal, Nick Fernandez & Ant. Nunez.

Absent: Gus Jacques.

A communication was received from the Bayou Terre-aux-Boeufs Drainage District, in the shape of a resolution, which reads as follows:

On motion of Mr. Nick Fernandez, seconded by Mr. Rene Estopinal, the following resolution was proposed:

Whereas, as per the foregoing communication from the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District, the said Board of Commissioners deem it advisable to reorganize the said drainage district in accordance with the terms and conditions of Article 281 of the Constitution, as amended by the electors of this State at the election held on the 8th day of November, 1910, and

Whereas: it is deemed necessary to carry out the objects and purposes for which this drainage district was organized and established to allow the said drainage district to take advantage of the conditions of Article 281 of the Constitution as thus amended in 1910;

Therefore be it resolved, by the Police Jury of the Parish of St. Bernard that the Bayou Terre-aux-Boeufs Drainage District is hereby reorganized and its boundaries are fixed as follows: The lower portion of the Third Ward of the Parish of St. Bernard, beginning at the upper line of the Poydras Plantation, all of the Fourth Ward, all of the Fifth Ward, all of the Sixth Ward, as they are at present constituted and situated, and all of that portion of the Seventh Ward, south of the north Township line of Township 12, West of the east range line of range 17, and that Territory shall constitute a drainage district, to be known as the "Bayou Terre Aux Boeufs Drainage District," and the said drainage district as thus reorganized, is given all the powers necessary under and by virtue of the terms and conditions set forth in Article 281 of the Constitution of the State of Louisiana, as amended by Act #197, of the Legislature of 1910, and ratified by the electors of this State on the 8th day of November, 1910, and the said reorganized drainage district as thus constituted by this ordinance is further given all the powers necessary to carry into effect

135 the work of drainage and reclamation in said drainage district, and incident to its labors, in conformity with Act #317, of the Legislature of 1910;

Be it further ordained, that said Bayou Terre-aux-Bœufs Drainage District as thus reorganized by this ordinance, and its Board of Commissioners, as it will be constituted, is hereby instructed to assume all of the debts and obligations of the Bayou Terre-aux-Bœufs Drainage District, as heretofore constituted, and more particularly to assume the obligations of a certain bond issue voted by the electors of said drainage district, aggregating \$60,000.00, and secured by a tax of 3¢ per acre on every acre of land in said drainage district, and which said bond issue and the levy of which said tax, was authorized by a vote of the electors of said drainage district on the 9th day of January, 1909, and ratified at another election held on the 14th day of June, 1909, and the said reorganized drainage district and its Board of Commissioners is further instructed to carry out in full the terms and conditions under which the said bonds were issued, and to set aside the necessary sinking fund for the payment of the principal thereof, in accordance with the terms and conditions *or* the ordinance authorizing the said issue of bonds, and to pay the interest as called for in the said ordinance, and in accordance with the terms and conditions of said bond.

Be it further ordained, that the said Bayou Terre-aux-Bœufs Drainage District as thus reorganized and its Board of Commissioners, as it will be constituted, is hereby instructed to assume the obligation of a certain bond issue, aggregating \$165,000.00, authorized at an election held in the said drainage district on the 28th day of December, 1909, and the said drainage district and its Board of Commissioners are hereby further instructed to carry out in full the terms and conditions under which the said bonds are to be paid and redeemed as well in principal and interest, and to set aside the necessary sinking fund to carry out in full the terms and conditions of said bond.

136 Be It Further Ordained, that the Bayou Terre-aux-Bœufs Drainage District as thus reorganized and constituted is hereby authorized to levy taxes, incur indebtedness, hold necessary elections, contract obligations, sue and be sued, and do and perform all the acts incident and necessary to the drainage and reclamation of lands in the Bayou Terre-aux-Bœufs Drainage District, conforming strictly therein to the terms and conditions of Article 281 of the Constitution of the State of Louisiana, as amended in 1910, and to the terms and conditions of Act #317 of the Legislature of 1910.

Carried.

On motion of Mr. Rene Estopinal, seconded by Mr. Nick Fernandez, Messrs. Alcide Gutierrez, Adam Estopinal, and Frank Messa, are hereby nominated as the three commissioners to be elected by the Police Jury, of the reorganized Bayou Terre-aux-Bœufs Drainage District. Messrs. Alcide Gutierrez and Frank Messa serving for the term of two years, and Mr. Adam Estopinal serving for the term of four years; the said gentlemen having been recommended by a majority of the resident land owners in the said drainage district.

I hereby certify the foregoing to be a true and correct copy of a resolution adopted by the Police Jury of the Parish of St. Bernard, Louisiana, on the 3rd day of December, 1910.

ALCIDE GUTIERREZ,
*Secretary of the Police Jury,
Parish of St. Bernard, La.*

Endorsed: No. 98741. Civil District Court, Parish of Orleans.
Filed Nov. 28/1911. J. McCormick, Dy. Clerk.

St. Bernard, La., Dec. 3, 1910.

137

The Board of Commissioners for the Bayou Terre-aux-Boeufs Drainage District, met this day in Special Session with the following members present: C. Verret, Gutierrez, Estopinal, Puig and Messa.

The Board was called to order for organization purposes by L. Nunez, President of the Police Jury, and there were present, Estopinal, Gutierrez and Messa elected Commissioners of the reorganized Bayou Terre-aux-Boeufs Drainage District, and Commissioners C. Verret, and J. B. Puig who have been duly appointed by the Governor were also present; there were therefore present the following Commissioners: C. Verret, A. Gutierrez, Adam Estopinal, Frank Messa and Frank Puig, all duly sworn according to law.

The President of the Police Jury thereupon read the ordinance of the Police Jury reorganizing the Bayou Terre-aux-Boeufs Drainage District, a copy of which ordinance was by unanimous vote ordered to be spread upon these minutes. And it was thereupon declared that the first thing in order was the election of officers of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, as thus reorganized by ordinance of the Police Jury on the 22nd day of Nov., 1911.

On motion of Mr. Gutierrez, seconded by Mr. Estopinal, Mr. C. Verret was nominated for President of the Board of Commissioners for the Bayou Terre-aux-Boeufs Drainage District. There being no further nomination, it was moved and seconded that the election of Mr. Verret be made unanimous.

Carried by the unanimous vote of all the Commissioners.

Mr. Gutierrez was thereupon nominated for Vice President.

There were no further nominations, and on motion of Mr. Estopinal, seconded by Mr. Messa, the nomination was made unanimous, and by the unanimous vote of all the Commissioners was declared elected.

Mr. Ben F. Estopinal was thereupon nominated for Secretary and Treasurer.

On motion of Mr. Estopinal seconded by Mr. Gutierrez, his election was unanimous by the vote of all the Commissioners.

Carried.

138 On motion of Mr. Messa, seconded by Mr. Gutierrez, the President of the Bayou Terre-aux-Boeufs Drainage District first elected was called to the chair to preside over the further delib-

erations of the Board of Commissioners. This motion being duly seconded and carried, Mr. Verret — his position, and Secretary assumed his duties at the desk.

The President announced business to be in order.

Resolution of Mr. Gutierrez was thereupon introduced and duly seconded as follows:

Be It Resolved, that we, the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District in general assembly, do hereby accept the conditions under which this Drainage District has been organized under the terms and conditions of the ordinance of the Police Jury of date Nov. 22nd, 1910.

The Resolution was thereupon seconded and carried unanimously.

Resolution of Mr. Gutierrez was thereupon introduced and duly seconded by Mr. Messa as follows:

Whereas, it was found to be necessary to extend the operations of the work, heretofore done in this drainage district in order to give the greatest possible benefit to the greatest number of land owners; and

Whereas, the funds at the disposal of the Board, derivable from tax heretofore levied by our predecessors in office are not sufficient to extend said work, or public improvement:

Therefore be it Resolved, that the President of this Board is hereby instructed to call an election to be held in the Bayou Terre-aux-Boeufs Drainage District, on Tuesday the 10th day of January, 1911, and that there be submitted to the property holders qualified to vote in said District under the Constitution and laws of this State, the following propositions, to-wit:

First. To vote to authorize the levy and assessment of an annual contribution or acreage tax of 16¢ per acre on every acre of land within the Bayou Terre-aux-Boeufs Drainage District which levy should begin with the year 1911 and continue for a total period of

forty (40) years Consecutively being the year- 1911 to 1950 both inclusive, for the purpose of providing and maintaining an adequate drainage system for said District in accordance with the provisions of Article 281 of the Constitution of the State of Louisiana, as amended and adopted in 1910.

Second. To authorize the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to incur an indebtedness of said District of \$500,000.00 and to be evidenced by 500 negotiable bonds of the District of \$1,000.00 each, in conformity with the provisions of Article 281 of the Constitution and Laws of this State. Said Bonds to be secured by, and payable out of the annual contribution or acreage tax of 16¢ per acre to be levied as above provided. Said Bonds to mature within forty years after their date to contain such provisions for their prior redemption at such times and in such amounts as the Board of Commissioners may by resolution determine, bearing interest at 5% per annum from this date, payable semi-annually on the first day of August and of February of each year, commencing with the first day of February, 1912, and the proceeds of the sale of which bonds shall be devoted to the accomplishment of the drainage work of said district.

Be it further resolved that the two foregoing propositions shall be submitted to the property tax payers of the Bayou Terre-aux-Boeufs Drainage District, qualified to vote under the laws of this State, at an election to be held on the 10th day of Jan., 1911. That the President of this Board be instructed to issue his proclamation calling such election after due legal advertising, which election shall be held at the Court House in the Parish of St. Bernard, situated in said Drainage District, on the said date, the polls to be open from 7:00 A. M. until 5 P. M., and the ballots printed shall contain the two foregoing propositions so that the voter may vote for or against either or both of such propositions, and that the President of this Board is instructed to prepare said Ballot in accordance with law and to have the same printed, and he is further instructed to appoint three Commissioners and one Clerk of election in accordance with law who shall make returns of said election, and the result thereof, with the ballot boxes and tally sheets duly sworn and sealed according to law to this Board, at its meeting to be held on the 12th day of January, 1911, when the said Board shall count the votes cast at said election, file the returns and announce the result. And the President is hereby authorized to thereupon issue his proclamation announcing promulgating the returns and result of said election in accordance with law.

The said resolution having been submitted to a vote, the following commissioners voted unanimously for the resolution: C. Verret, Estopinal, Gutierrez, Messa and Puig, and it having received the votes of a majority of the Commissioners, the resolution was declared and carried.

On motion of Com. Estopinal, duly seconded, the President was instructed to appoint a Committee on Finance, consisting of three members of Board. The Chairman thereupon appointed Estopinal and Gutierrez and Messa to serve on said Finance Committee.

There being no further business, the Board adjourned.

BEN F. ESTOPINAL,

Secretary Bayou Terre-aux-Boeufs Drainage Dist.

I hereby certify the foregoing to be a true and correct copy of the Minutes of the Meeting of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District of date December 3rd, 1910.

BEN F. ESTOPINAL, *Secretary.*

Endorsed: No. 98741. Civil District Court, Parish of Orleans.
Filed Nov. 28, 1911. J. McCormick, Dy. Clerk.

Be It Known, That I, Cesaire Verret, President of the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District, duly authorized in accordance with the resolution adopted by the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District, at its meeting held on the 3rd day of December, 1910, to

call an election in the Bayou Terre Aux Boeufs Drainage District, to be held on Tuesday, 10th day of January, 1911, for the purpose of submitting to the property holders qualified to vote in said Drainage District, the following propositions:

First. To authorize the levy and assessment of an annual contribution of acreage tax of sixteen cents (16¢) per acre on every acre of land in the Bayou Terre Aux Boeufs Drainage District, which levy should begin with the year 1911, and continue for a total period of forty years, consecutively, for the purpose of providing and maintaining an adequate Drainage System for said District in accordance with the provisions of law and of Article 281 of the Constitution of the State of Louisiana, as amended in 1910.

Second. To authorize the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to incur an indebtedness of the District of five hundred thousand dollars; and to further authorize said Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District to issue five hundred negotiable bonds of the District of One Thousand Dollars each, in conformity with the provisions of Article 281 of the Constitution and laws of this State. The said Bonds to be secured by and payable out of the annual contribution or acreage tax of sixteen cents (16¢) per acre to be levied as provided. Said bonds to mature within forty years after their date and to contain proper provisions for their prior redemption at such times and in such amounts as the Board of Commissioners may by resolution determine.

Said bonds to bear interest at five per cent per annum from their date; said interest to be paid semi-annually on the first day of February, and the first day of August of each year, commencing with the first day of February, 1912, and which said bonds the said Board of Commissioners are authorized to sell at par and devote the proceeds of said sale to the accomplishment of the Drainage work of said District.

Said election is called in conformity with resolution of the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District, and shall be held at the Court House in the Parish of St. Bernard, situated in the said District, on the said date, the polls to be open from 7 A. M. to 5 P. M., in accordance with the law, and I hereby appoint V. M. Guiterrez, S. L. Estopinal, and Aug. Esteves, Commissioners of Election, and Alfred Estopinal, Clerk of said Election, who shall make returns of same and the result thereof with the ballot boxes and the tally sheets duly sworn and sealed according to law, to the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District, at its meeting to be held on the 12th day of January, 1911, when the said board shall count the votes cast at said election, and announce the result of same.

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C. VERRET, *President.*

Attest:

BEN F. ESTOPINAL, *Secretary.*

I hereby certify the foregoing to be a true and correct copy of the Notice of Election for an election in the Bayou Terre Aux Boeufs Drainage District of date January 10th, 1911, and a true and correct copy as it appeared and was published in the St. Bernard Voice, the Official Journal of said Drainage District and of the Parish of St. Bernard, on December 3rd, 10, 17, 24, and 31, 1910, and January 7th, 1911.

BEN F. ESTOPINAL,
*Secretary Board of Commissioners,
Bayou Terre Aux Boeufs Drainage District.*

Endorsed: No. 98741. Civil District Court, Parish of Orleans.
Filed Nov. 28, 1911. J. McCormick, Dy. Clerk.

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The St. Bernard Voice,
Wm. F. Roy, Editor and Proprietor,
Arabi, La.

Notice of Election.

Be it known, that I, Cesaire Verret, President of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, duly authorized in accordance with the resolution adopted by the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, at its meeting held on the 3rd day of December, 1910, to call an election in the Bayou Terre-aux-Boeufs Drainage District, to be held on Tuesday 10 day of January, 1911, for the purpose of submitting to the property holders qualified to vote in said Drainage District, the following propositions:

First: To authorize the levy and assessment of an annual contribution or acreage tax of sixteen (16¢) cents per acre on every acre of land in the Bayou Terre-aux-Boeufs Drainage District, which levy should begin with the year 1911, and continue for a total period of forty years, consecutively, for the purpose of providing and maintaining an adequate drainage system for said district in accordance with the provisions of law and of Article 281 of the Constitution of the State of Louisiana, as amended and adopted in 1910.

Second: To authorize the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to incur an indebtedness of the District of five hundred thousand (\$500,000.00) Dollars; and to further authorize said Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to issue five hundred (500) negotiable bonds of the district of one thousand (\$1000.00) Dollars each, in conformity with the provisions of Article 281 of the Constitution and laws of this State. The said Bonds to be secured by and payable out of the annual contribution or acreage tax of sixteen cents per acre to be levied as provided. Said Bonds to mature within forty years after their date, and to contain proper provisions for their re-

demption prior to said date, at such times and in such amounts as the Board of Commissioners may by resolution determine.

Said Bonds to bear interest at five (5%) per cent per annum from their date; said interest to be paid semi-annually on the first day of August, and the first day of February of each year, commencing with the first day of February, 1912, and which said bonds

144 the said Board of Commissioners are authorized to sell at par and devote the proceeds of said sale to the accomplishment of the drainage work of said district.

Said Election is called in conformity with resolution of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, and shall be held at the Court House in the Parish of St. Bernard, situated in said district, on the said date, the polls to be open from 7 A. M. until 5 P. M., in accordance with the law, and I hereby appoint V. M. Gutierrez, S. L. Estopinal, and Aug. Esteves Commissioners of election to conduct the said election, and Alfred Estopinal, Clerk of said election, who shall make returns of same and the result thereof with the ballot boxes and tally sheets duly sworn and sealed according to law, to the Board of Commissioners of the Bayou Terre aux-Boeufs Drainage District, at its meeting to be held on the 12th day of January, 1911, when said board shall count the votes cast at said election, and announce the result of same.

C. VERRET, *President.*

BEN F. ESTOPINAL, *Secretary.*

Endorsed: No. 98741. Civil District Court, Parish of Orleans.
Filed Nov. 28, 1911. J. McCormick, Dy. Clerk.

STATE OF LOUISIANA.

Parish of St. Bernard;

Personally came and appeared before the undersigned authority. William F. Roy, editor and proprietor of the St. Bernard Voice, a weekly newspaper published in the Parish of St. Bernard, Louisiana, who being duly sworn deposes and says:

That the amended "Notice of Election" for an election held in the Bayou Terre aux Boeufs Drainage District, on January 10, 1911, was published in the St. Bernard Voice, the Official Journal of the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District on December 3, 10, 17, 24 and 31, 1910, and January 7, 1911.

WM. F. ROY.

Sworn to and subscribed before me this third day of July, 1911.

VICTOR CIEUTAT,

Judge 1st Justice Court,

Parish of St. Bernard, La.

145

St. Bernard, La., Jan. 12, 1911.

Proceedings of the Meeting of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District of date January 12, 1911.

The Board was called to order by President C. Verret, Secretary Ben F. Estopinal at his desk. There were present also the following Commissioners: Puig, Messa, Estopinal, and Gutierrez; Absent none.

The following resolution introduced by Commissioners Estopinal who moved its adoption, which was thereupon duly seconded by Commissioner Messa.

Be it resolved that this Board proceed to open the ballot boxes and to count the votes cast at the Special Election held in this District on the 10th day of January, 1911, and to declare the result of said election, and that the President appoint two tellers to count the votes and compile the returns thereof; carried.

The President thereupon announced the appointment of Messrs. Gutierrez and Estopinal, as Tellers, to open the ballot boxes and to count the votes cast at said election on January 10, 1911, in the presence of the members of the Board, whereupon the tellers and the members of said Board proceeded to count the votes cast at said election and after examination of the Ballot boxes, and counting the ballots therein, and an examination of the ballots therein, and the tally sheets and list of voters and a compilation made by the Commissioners and Clerk of the election of said ballots, and being duly and fully advised in the premises, it was ascertained and determined by the Board that there were 102 votes, representing an assessed valuation of Twenty Nine Thousand Four Hundred and Thirty-one 19/100 (\$29431.19/00) cast in favor of Proposition #1, viz:

To vote to authorize the levy and assessment of an annual contribution or acreage tax of sixteen (16¢) cents per acre on every acre of land in the Bayou Terre-aux-Boeufs Drainage District, which levy shall begin with the year 1911 for Forty (40) years consecutively for the purpose of providing and maintaining an adequate drainage system for said district with accordance with the provisions of Article 281 of the Constitution of the State of Louisiana as amended and adopted in 1910 and that there were nine votes cast against said Proposition No. 1, said votes representing an assessed valuation of Twenty five Hundred and Thirteen and 75/100 Dollars (\$2513.75).

That there were 102 votes cast in favor of Proposition No. 2, viz: To authorize the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to incur an indebtedness of the District of Five Hundred Thousand Dollars (\$500,000.00), and to issue five hundred (500) negotiable bonds of the District of One Thousand Dollars (\$1,000.00) each, representing the indebtedness hereinbefore referred to, aggregating Five Hundred Thousand Dollars (\$500,000.00), in conformity with Article 281 of the Constitution and

Laws of this State. The said bonds to be secured by and payable out of the annual contribution or acreage tax of sixteen (16¢) per acre hereinabove provided for, in principal and interest until paid, said bonds to mature within forty (40) years from their date and to contain proper provisions for their prior redemption at such times and in such amounts as the Board of Commissioners may by resolution determine.

The said bonds to bear interest at five per centum (5%) per annum from this date; said interest to be paid semi-annually after first day of February, 1912, and which said bonds the said Board of Commissioners of the said Bayou Terre aux Boeufs Drainage District are authorized to sell at par, and devote the proceeds of said sale for the purpose of providing and maintaining an adequate Drainage system for said District. Said votes representing an assessed valuation of twenty-nine thousand four hundred and thirty-one and 19/100 Dollars (\$29,431.19/100) and that there were nine (9) votes cast against said proposition No. 2, said votes representing an assessed valuation of twenty-five hundred and thirteen and 75/100 Dollars (\$2513.75/100), and it having been ascertained that Proposition No. 1 received a majority in number and amount of votes cast at said election, said Proposition No. 1 is declared to be carried; and the said Proposition No. 2, having received a majority in number and amount of the votes cast at said election was declared to be carried; and this Process Verbal and the Canvass of the votes of said election held in this District on January 10, 1911, having been duly written and read, was thereupon signed by the tellers

147 appointed by the President of the Board, and by the President of said Board its Secretary and each member thereof.

(Signed)

C. VERRET, *President*;
ALCIDE GUTIERREZ,
ADAM ESTOPINAL,
FRANK MESSA,
JOHN B. PUIG,
Commissioners.

ALCIDE GUTIERREZ,

ADAM ESTOPINAL,

Tellers.

BEN F. ESTOPINAL, *Secretary.*

Endorsed: No. 98741. Civil District Court, Parish of Orleans.
Filed Nov. 28, 1911. J. McCormick, Dy. Clerk.

148 The President thereupon again called the Board to order for business; on motion of Commissioner Messa, seconded by Commissioner Puig, the following resolution was unanimously carried.

Be it resolved, That the President of this Board is authorized to issue its proclamation announcing and promulgating the results of the election held in this District on January 19, 1911, as to each of the above propositions, and that said proclamation be duly pub-

lished in accordance with law, in the official Journal of the Parish of St. Bernard.

Moved by Commissioner Estopinal, seconded by Commissioner Gutierrez, the following resolution was unanimously carried:

Whereas, The voters of the Bayou Terre-zux-Boeufs Drainage District, on January 10, 1911, have authorized the levy of an annual tax of Sixteen (16¢) cents per acre on every acre of land in this District, beginning with the year 1911 for Forty (40) years consecutively, being the years 1911 to 1950 inclusive, in accordance with Article 281 of the Constitution of this State, and the laws of the State.

Therefore, be it resolved, That this Board hereby levy and order the levy and collection of said tax of sixteen (16¢) per acre on every acre of land in this District for Forty (40) consecutive years, beginning with the year 1911, and ending with the year 1950 inclusive, and it is further ordered and resolved that the President of this Board be and he is hereby instructed to do and cause to be done whatever is required by law, to make fully effective the levy, and to collect the said tax.

It is further ordered that a certified copy of this resolution be forwarded to the assessor and a certified copy to the Sheriff of the Parish of St. Bernard to evidence their authority to assess and collect the said tax. Carried.

Resolution offered by Commissioner Puig, who moved its adoption, which was thereupon duly seconded by Commissioner Gutierrez:

Whereas, in accordance with the Ordinance voted upon by the property tax payers on January 10, 1911, the Bayou Terre-aux-Boeufs Drainage District through its Board of Commissioners,
149 is authorized to incur an indebtedness of Five Hundred Thousand (\$500,000.00) Dollars and to issue negotiable bonds for the said amount, represented by Five Hundred negotiable bonds of One Thousand (\$1,000.00) Dollars each, and which said bonds are to be payable within forty (40) years from their date, and bearing date of February 1, 1911, and the redemption of which said bonds shall begin Five (5) years from their date in numerical order, and which said bonds shall bear Five per centum (5%) interest per annum from their date, interest payable semi-annually, commencing the 1st day of February, 1912, in conformity with Article 281 of the Constitution and the Laws of the State of Louisiana.

Be it further resolved, That these bonds mature in the following manner:

| Bonds No. | 1 to | 32 inclusive | to mature | on | February 1st, | 1916. |
|-----------|------|--------------|-----------|----|---------------|-------|
| " " | 33 | 40 | " | " | " | 1917. |
| " " | 41 | 49 | " | " | " | 1918. |
| " " | 50 | 58 | " | " | " | 1919. |
| " " | 59 | 67 | " | " | " | 1920. |
| " " | 68 | 77 | " | " | " | 1921. |
| " " | 78 | 87 | " | " | " | 1922. |
| " " | 88 | 98 | " | " | " | 1923. |
| " " | 99 | 109 | " | " | " | 1924. |
| " " | 110 | 121 | " | " | " | 1925. |
| " " | 122 | 134 | " | " | " | 1926. |
| " " | 135 | 147 | " | " | " | 1927. |
| " " | 148 | 161 | " | " | " | 1928. |
| " " | 162 | 176 | " | " | " | 1929. |
| " " | 177 | 191 | " | " | " | 1930. |
| " " | 192 | 207 | " | " | " | 1931. |
| " " | 208 | 224 | " | " | " | 1932. |
| " " | 225 | 241 | " | " | " | 1933. |
| " " | 242 | 260 | " | " | " | 1934. |
| " " | 261 | 279 | " | " | " | 1935. |
| " " | 280 | 300 | " | " | " | 1936. |
| " " | 301 | 321 | " | " | " | 1937. |
| " " | 322 | 344 | " | " | " | 1938. |

150

| Bonds No. | 345 to | 368 inclusive | to mature | on | February 1st, | 1939. |
|-----------|--------|---------------|-----------|----|---------------|-------|
| " " | 369 | 393 | " | " | " | 1940. |
| " " | 394 | 419 | " | " | " | 1941. |
| " " | 420 | 446 | " | " | " | 1942. |
| " " | 447 | 475 | " | " | " | 1943. |
| " " | 476 | 500 | " | " | " | 1944. |

The whole issue will be retired.

Be it further resolved, That the plan of the retirement of said bonds is hereby fixed on the following financial basis. There being shown by Certificate of the Assessor, Two Hundred Twenty-one Thousand (221,000-) acres in this District at sixteen (16¢) cents per acre, create the gross revenue of Thirty-five Thousand Three Hundred and Sixty (\$35,360.00) Dollars, of which Twenty-five Thousand (\$25,000.00) Dollars goes to interest each year, leaving a balance of Ten Thousand Three Hundred and Sixty (\$10,360.00) Dollars, which will be applied each year as follows:

Sixty-five Hundred (\$6,500.00) Dollars will be set aside each year for a sinking fund for the retirement of the bonds, and the balance Three Thousand Eight Hundred and Sixty (\$3,860.00) Dollars for expense and operation, and that after the fifth year, and from the beginning of the redemption period, the saving of interest on the retired and redeemed bonds will be added to the sinking fund for the retirement of the outstanding bonds.

Said resolution having been submitted to a vote was declared carried.

On motion by Commissioner Gutierrez, seconded by Commissioner Puig, the following form of bond was submitted:

United States of America,

State of Louisiana.

Public Improvement Bond.

Five Per Cent Bond of the Bayou Terre-aux-Boeufs Drainage District
Parish of St. Bernard, State of Louisiana.

Know all men by these presents, that the Bayou Terre-aux-Boeufs Drainage District, of the Parish of St. Bernard, State of Louisiana, acknowledges itself to owe, and for value received hereby 151 promises to pay to bearer the sum of One Thousand (\$1,000.00) Dollard on February 1st, 1951, unless sooner redeemed as hereinafter provided, with interest thereon at the rate of five per centum (5%) per annum from date, payable semi-annually on the First day of February, and the First day of August of each year, as evidenced by the Coupons hereto attached, until the principal thereof is paid. The principal, sum and interest thereon are payable in gold coin of the United States, of the present standard of coinage, at the — Bank, in the City of New Orleans, State of Louisiana, or, at the option of the holder hereof, at the — Chicago, Illinois, upon the presentation and surrender of this bond and coupon hereto attached, as they respectively mature.

This bond is one of a series of Five Hundred (500) bonds, all of like date, and numbered One to Five Hundred (1—500) inclusive; aggregating in amount Five Hundred Thousand (\$500,000.00) Dollars, issued for the purpose of public improvement: Said bond is issued under the authority of Article 281 of the Constitution of the State of Louisiana, and in accordance with the provisions of Acts of the Legislature of the State of Louisiana, and pursuant to Ordinances passed by the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, of the Parish of St. Bernard, State of Louisiana, and submitted to a vote of the property tax payers qualified as electors of the said Drainage District, at an election duly held on the 10th day of January, 1911, which said Ordinance provided for the levying of a tax of Sixteen (16¢) Cents per acre on every acre of land in the said Bayou Terre-aux-Boeufs Drainage District for forty years consecutively, beginning with the year 1911, and ending with the year of 1950 inclusive. This bond and every one issued is secured in principal and interest by said tax of sixteen (16¢) cents per acre, voted at said election; and it is hereby certified that all acts, conditions, and things necessary to be done precedent to the issuance of this bond and the other bonds of this series, in order to make them legal, binding and valid obligations of said District, have been done and performed in due form, as required by law; that the total indebtedness of said Drainage District including this issue of bonds does not exceed the Constitution or

152 Statutory limitations of indebtedness, and that the tax necessary to pay the same has been duly voted and levied and does not exceed the Constitution and Statutory limitations.

The Bonds of this series, of which this is one, are redeemable in numerical order and in the following manner:

| Bonds | No. | 1 to | 32 inclusive | to mature | on | February 1st, | 1916. |
|-------|-----|------|--------------|-----------|----|---------------|---------|
| " | " | 33 | 40 | " | " | " | " 1917. |
| " | " | 41 | 49 | " | " | " | " 1918. |
| " | " | 50 | 58 | " | " | " | " 1919. |
| " | " | 59 | 67 | " | " | " | " 1920. |
| " | " | 68 | 77 | " | " | " | " 1921. |
| " | " | 78 | 87 | " | " | " | " 1922. |
| " | " | 88 | 98 | " | " | " | " 1923. |
| " | " | 99 | 109 | " | " | " | " 1924. |
| " | " | 110 | 121 | " | " | " | " 1925. |
| " | " | 122 | 134 | " | " | " | " 1926. |
| " | " | 135 | 147 | " | " | " | " 1927. |
| " | " | 148 | 161 | " | " | " | " 1928. |
| " | " | 162 | 176 | " | " | " | " 1929. |
| " | " | 177 | 191 | " | " | " | " 1930. |
| " | " | 192 | 207 | " | " | " | " 1931. |
| " | " | 208 | 224 | " | " | " | " 1932. |
| " | " | 225 | 241 | " | " | " | " 1933. |
| " | " | 242 | 260 | " | " | " | " 1934. |
| " | " | 261 | 279 | " | " | " | " 1935. |
| " | " | 280 | 300 | " | " | " | " 1936. |
| " | " | 301 | 321 | " | " | " | " 1937. |
| " | " | 322 | 344 | " | " | " | " 1938. |
| " | " | 345 | 368 | " | " | " | " 1939. |
| " | " | 369 | 393 | " | " | " | " 1940. |
| " | " | 394 | 419 | " | " | " | " 1941. |
| " | " | 420 | 446 | " | " | " | " 1942. |
| " | " | 447 | 475 | " | " | " | " 1943. |
| " | " | 476 | 500 | " | " | " | " 1944. |

In witness whereof, the Board of Commissioners of the
 153 Bayou Terre-aux-Boeufs Drainage District of the Parish of
 St. Bernard, State of Louisiana, by the virtue of the authority
 vested in them by the Constitution and Laws of the State of Louisiana, have caused this bond to be signed by its President and countersigned by its Secretary, and sealed with the seal of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District in the Parish of St. Bernard, State of Louisiana, and the interest coupons hereto attached to be executed by the lithographed signature of said President and Secretary, on this first day of February, 1911.

— — —, *President.*

— — —, *Secretary.*

Basis of Calculation & Retirement of Bonds.

\$500,000 @ 5% - \$25,000 per annum.

Sinking Fund - 6,500 "

Without considering 3% interest on deposits in Bank.

| No. of Bonds \$500,000 inclusive. | | 5 year | 1916 | 5 times \$6500 - \$32500 | Bal. \$500 |
|-----------------------------------|---------|--------|------|--|------------|
| 1-32 | 32,000 | | | Interest saved on 32000 - 1600 plus | |
| 33-40 | 8,000 | 6 " | 1917 | 500 plus 6500 - Bal. \$600 | |
| 41-49 | 460,000 | | | Interest saved on 40000 - 2000 plus | |
| | 9,000 | 7 " | 1918 | 600 plus 6500 - Bal. \$100 | |
| 50-58 | 451,000 | | | Interest on \$49000 - 2450 plus 100 | |
| | 9,000 | 8 " | 1919 | plus 6500 - Bal. \$50 | |
| 59-67 | 442,000 | | | Interest on 58000 - 2900 plus 50 | |
| | 9,000 | 9 " | 1920 | plus 6500 Bal. \$450 | |
| 68-77 | 433,000 | | | Interest on 67000 - \$3350 plus 450 | |
| | 10,000 | 10 " | 1921 | plus 6500 Bal. \$300 | |
| 78-87 | 423,000 | | | Interest on 77000 - \$3850 plus 300 | |
| | 10,000 | 11 " | 1922 | plus 6500 Bal. \$650. | |
| 88-98 | 413,000 | | | Interest on \$87000 - \$4350 plus 650 | |
| | 11,000 | 12 " | 1923 | plus 6500 - Bal. \$500 | |
| 99-109 | 402,000 | | | Interest saved on 98000 - 4900 plus | |
| | 11,000 | 13 " | 1924 | 500 plus 6500 - Bal. \$900 | |
| 110-121 | 391,000 | | | Interest saved on 109000- 5450 plus | |
| | 12,000 | 14 " | 1925 | 900 plus 6500 - Bal. \$850 | |
| 122-134 | 379,000 | | | Interest saved on 121000- 6050 plus | |
| | 13,000 | 15 " | 1926 | 850 plus 6500 - Bal. \$300 | |
| 135-147 | 366,000 | | | Interest saved on \$134000- 6700 plus | |
| | 13,000 | 16 " | 1927 | 300 plus 6500 - Bal. \$500 | |
| 148-161 | 353,000 | | | Interest saved on 147000 - 7350 plus | |
| | 14,000 | 17 " | 1928 | 500 plus 6500 - Bal. \$350 | |
| 162-176 | 339,000 | | | Interest saved on 161,000 - 8050 plus | |
| | 14,000 | 18 " | 1929 | 350 plus 6500 - Bal. \$900 | |
| 177-191 | 325,000 | | | Interest saved on 176000 - 8800 plus | |
| | 15,000 | 19 " | 1930 | 900 plus 6500 - Bal. \$200 | |
| 192-207 | 310,000 | | | Interest saved on 191000 - 9550 plus | |
| | 16,000 | 20 " | 1931 | 200 plus 6500 - Bal. \$200 | |
| 208-224 | 294,000 | | | Interest saved on 207000 - 10350 plus | |
| | 16,000 | 21 " | 1932 | 200 plus 6500 - Bal. \$1050 | |
| 225-241 | 278,000 | | | Interest saved on 224000 - 11200 plus | |
| | 18,000 | 22 " | 1933 | 1050 plus 6500 - Bal. \$750 | |
| 242-260 | 260,000 | | | Interest saved on 241000 - 12050 plus | |
| | 19,000 | 23 " | 1934 | 750 plus 6500 - Bal. \$200 | |
| 261-279 | 241,000 | | | Interest saved on 260000 - 13000 plus | |
| | 19,000 | 24 " | 1935 | 200 plus 6500 - Bal. \$750 | |
| 280-300 | 222,000 | | | Interest saved on 279000 - 13950 plus | |
| | 20,000 | 25 " | 1936 | 750 plus 6500 - Bal. \$1200 | |
| 301-321 | 202,000 | | | Interest saved on 300000 - 15000 plus | |
| | 22,000 | 26 " | 1937 | 1200 plus 6500 - Bal. \$700 | |
| 322-344 | 180,000 | | | Interest saved on 321000 - 16050 plus | |
| | 22,000 | 27 " | 1938 | 700 plus 6500 - Bal. \$1250 | |
| 345-368 | 158,000 | | | Interest saved on 344000 - 17200 plus | |
| | 24,000 | 28 " | 1939 | 1250 plus 6500 - Bal. \$950 | |
| 369-393 | 134,000 | | | Interest saved on 368,000 - 18400 plus | |
| | 25,000 | 29 " | 1940 | 950 plus 6500 - Bal. \$850 | |
| 394-419 | 109,000 | | | Interest saved on 393000 - 19650 plus | |
| | 26,000 | 30 " | 1941 | 850 plus 6500 - Bal. \$1000 | |
| 420-446 | 83,000 | | | Interest saved on 419000 - 20950 plus | |
| | 27,000 | 31 " | 1942 | 1000 plus 6500 - Bal. \$1450 | |
| 447-475 | 56,000 | | | Interest saved on 446000 - 22300 plus | |
| 476-500 | 29,000 | 32 " | 1943 | 1450 plus 6500 - Bal. 1,250 | |
| | 27,000 | 33 " | 1944 | Retired | |



(Form of Coupon.)

No. —.

\$25.00.

On the First day of February, 19—, the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District will pay to bearer the sum of Twenty-five (\$25.00) Dollars at the — Bank, in the City of New Orleans, or, at the option of the holder hereof, at the Banking House, at Chicago, Illinois, being the interest due on Public Improvement Bond dated February 1, 1911.

No. —.

— —, *President.*— —, *Secretary.*

And the said form of bond and coupons as submitted, was unanimously adopted by the Board.

On motion of Commissioner Gutierrez, seconded by Commissioner Puig, it was resolved that the Secretary of this Board be and is hereby instructed to send a Certified copy of the process Verbal canvassing the results of the election of January 10, 1911, to the Secretary of State, and to the Clerk of Court of St. Bernard, to be respectively registered and recorded according to law.

There being no further business the Board adjourned.

BEN F. ESTOPINAL,

Secretary Bayou Terre-Boeufs Drainage District.

154 I hereby certify the foregoing to be a true and correct copy of the Minutes of the Meeting of the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District of date January 12th, 1911.

BEN F. ESTOPINAL, *Secretary.*

NOTE.—The certificate of the Assessor as attached to this record is based on the rolls of 1911, whereas the financial estimate as shown by the resolution of the Board is based on the roll of 1910. The difference is due to the fact that certain public lands not previously subject to taxation passed into private hands during the early months of 1911 therefore making them subject to taxation on the 1911 rolls, while they were exempt on the 1910 rolls as public properties.

NOTE.—Each of these bonds to be endorsed in accordance with Section 31, Act No. 256 of 1910, as follows: "This bond secured by a tax registered on this — day of —, 1911.

[Seal of the State of Louisiana.]

— —, *Secretary of State.*

Endorsed: No. 98741. Civil District Court, Parish of Orleans. Filed Nov. 28, 1911. J. McCormick, Dy. Clerk.

(Here follows table marked page 155.)

Proclamation.

I, Cesaire Verret, President of the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District, do hereby announce and proclaim the result of the election held in this District on January 10, 1911, as ascertained by the canvass of a vote of said election by the Board of Commissioners of said Drainage District in session assembled on the 12th day of January, 1911, and the said canvass showed 102 votes, representing an assessed valuation of \$29,431.19, in favor of proposition No. 1, to-wit:

To authorize the levy and assessment of an annual provision or acreage tax of sixteen (16¢) cents per acre on every acre of land within the Bayou Terre Aux Boeufs Drainage District, which levy shall begin with the year 1911, and continue for the total period of forty (40) years consecutively, being the years of 1911 to 1950, inclusive, for the purpose of providing and maintaining an adequate Drainage System for said Drainage District in accordance with Article 281 of the Constitution of the State of Louisiana; and that there were nine votes against the said proposition No. 1, as above set forth, representing an assessed valuation of \$2,513.75, and that said proposition No. 1, having received a majority in number and amount of the votes cast at said election, is hereby declared to be carried.

That there were 102 votes, representing an assessed valuation of \$29,431.19, cast in favor of Proposition No. 2, to-wit:

To authorize the Board of Commissioners of the Bayou Terre — Boeufs Drainage District to incur an indebtedness of five hundred thousand dollars and to issue negotiable bonds to the District of one thousand dollars each, in conformity with the provisions of Article 281 of the Constitution and Laws of this State. Said bonds to be secured by and payable out of the annual contribution or acreage tax of sixteen cents (16¢) per acre, to be levied as provided for in the Proposition No. 1, said Bonds to mature within forty years after their date, to contain such provisions for their prior redemption at such times and in such amounts as the Board of Commissioners may determine, to bear interest of five per cent from their date, payable semi-annually after the first day of February, 1912, and the proceeds of the sale of which bonds shall be devoted to the accomplishment of the Drainage work in said District.

And that there were nine votes, representing an assessed valuation of \$2,513.75, against said Proposition No. 2, as above set forth, and the said Proposition having received the majority in number and amount of the votes cast is declared to be carried.

Therefore, in accordance with the resolution of the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District, passed at its meeting of January 12th, 1911, I hereby declare said propositions Nos. 1 and 2, as heretofore set forth, to have been duly
157 carried, this proclamation announcing the result of the votes
thus cast.

Thus done and Passed in the Parish of St. Bernard on this the 12th day of January, 1911.

C. VERRET, *President.*

BEN F. ESTOPINAL, *Secy.*

I hereby certify the foregoing to be a true and correct copy of the proclamation of the President of the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District, announcing the result of the special election held in said Drainage District on January 10th, 1911, and a true and correct copy of the said proclamation as it appeared and was published in the St. Bernard Voice, the Official Journal of the Board of Commissioners of said Drainage District and of the Parish of St. Bernard, on the 21st day of January, 1911.

BEN F. ESTOPINAL,

*Secretary Board of Commissioners, Bayou
Terre aux Boeufs Drainage District.*

Endorsed: No. 98741. Civil District Court, Parish of Orleans.
Filed Nov. 28, 1911. J. McCormick, Dy. Clerk.

158

The St. Bernard Voice.

Wm. F. Roy, Editor and Proprietor, Arabi, La.

Proclamation.

I, Cesaire Verret, President of the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District, do hereby announce and proclaim the result of the election held in this District on January 10, 1911, as ascertained by the canvass of a vote of said election by the Board of Commissioners of said Drainage District in session assembled on the 12th day of January, 1911, and the said canvass showed 102 votes, representing an assessed valuation of \$29,431.19, in favor of proposition No. 1, to-wit:

To authorize the levy and assessment of an annual provision or acreage tax of sixteen (16¢) cents per acre on every acre of land within the Bayou Terre Aux Boeufs Drainage District, which levy shall begin with the year 1911, and continue for the total period of forty (40) years consecutively, being the years of 1911 to 1950, inclusive, for the purpose of providing and maintaining an adequate Drainage System for said Drainage District in accordance with Article 281 of the Constitution of the State of Louisiana; and that there were nine votes against the said Proposition No. 1, as above set forth, representing an assessed valuation of \$2,513.75, and that said Proposition No. 1, having received a majority in number and amount of the votes cast at said election, is hereby declared to be carried.

That there were 102 votes, representing an assessed valuation of \$29,431.19, cast in favor of Proposition No. 2, to-wit:

To authorize the Board of Commissioners of the Bayou Terre — Boeufs Drainage District to incur an indebtedness of five hundred thousand dollars and to issue negotiable bonds to the District of One thousand dollars each, in conformity with the provisions of Article 281 of the Constitution and Laws of this State. Said bonds to be secured by and payable out of the annual contribution of acreage tax of sixteen — (16¢) per acre, to be levied as provided for in the Proposition No. 1. Said bonds to mature within forty (40) years

from their date, to contain such provisions for their prior redemption at such times and in such amounts as the Board of Commissioners may determine, to bear interest of five (5) per cent from their date, payable semi-annually after the first day of February, 1912, and the proceeds of the sale of which bonds shall be devoted to the accomplishment of the Drainage work in said District.

And that there were nine votes, representing an assessed valuation of \$2,513.75, against said Proposition No. 2, as above set forth, and the said Proposition having received the majority in number and amount of the votes cast is declared to be carried.

Therefore, in accordance with the resolution of the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District, passed at its meeting of January 12th, 1911. I hereby declare said Propositions Nos. 1 and 2, as heretofore set forth, to have been duly
159 carried, this proclamation announcing the result of the votes thus cast.

Thus Done and Passed in the Parish of St. Bernard on this the 12th day of January, 1911.

C. VERRET, *President.*

BEN F. ESTOPINAL, *Secy.*

STATE OF LOUISIANA,
Parish of St. Bernard:

Personally came and appeared before the undersigned authority, William F. Roy, editor and proprietor of the St. Bernard Voice, a weekly newspaper published in the Parish of St. Bernard, Louisiana, who, being duly sworn deposes and says:

That the amended "Proclamation," setting forth the result of an election held in the Bayou Terre Aux Boeufs Drainage District on January 10, 1911, was published in the St. Bernard Voice, the Official Journal of the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District on January 21, 1911.

WM. F. ROY.

Sworn to and subscribed before me this third day of July, 1911.

VICTOR CIEUTAT,

Judge 1st Justice Court, Parish of St. Bernard, Louisiana.

Endorsed: No. 98741. Civil District Court, Parish of Orleans.
Filed Nov. 28, 1911. J. McCormick, Dy. Clerk.

Special election called by virtue of an ordinance adopted by the Board on Commissioners of the Bayou Terre-aux-Boeufs Drainage District on the 3rd day of December, 1910.

(P. 160-a)

Election to be held on Tuesday, the 10th day of January, 1911.

BALLOT.

YES

1st.—Proposition to authorize the levy and assessment of an annual contribution or acreage tax of sixteen (16) cents per acre on every acre of land within the Bayou Terre-aux-Boeufs Drainage District, which levy shall begin with the year 1911 and continue for a total period of forty (40) years consecutively, being the years 1911 to 1950 inclusive; for the purpose of providing and maintaining an adequate Drainage System for said District in accordance with Article 281 of the Constitution of Louisiana, as amended and adopted in 1910.

NO

Proposition to levy an annual contribution of sixteen (16) cents per acre on every acre of land in the Bayou Terre-aux-Boeufs Drainage District for forty (40) years consecutively, as above set forth.

YES

2nd.—Proposition to authorize the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to incur an indebtedness of said District of Five Hundred Thousand Dollars (\$500,000.00) and to issue negotiable bonds of the District of One Thousand Dollars (\$1,000.00) each in conformity with the provisions of Article 281 of the Constitution and laws of this State. Said Bond to be secured by and payable out of the annual contribution or acreage tax of sixteen (16) cents per acre to be levied as provided for in Proposition No. 1. Said Bond to mature within forty (40) years after their date, to contain such and in such amounts prior redemption at such times and in such amounts as the Board of Commissioners may determine, to bear interest at Five per cent. (5%) from their date, payable Semi-Annually after the 1st day of February, 1912, and the proceeds of the sale of such Bonds shall be devoted to the accomplishment of the Drainage work of said District.

NO

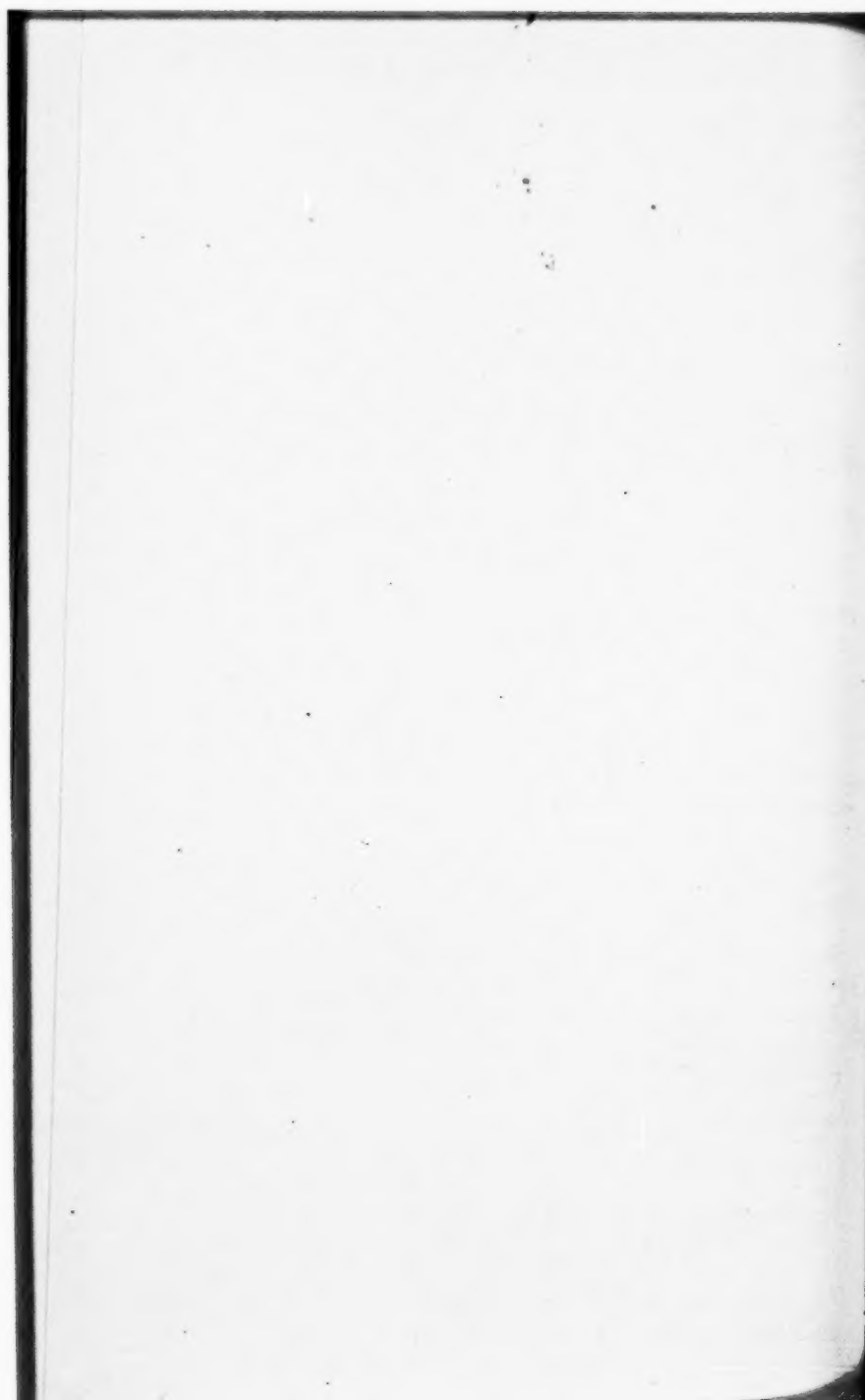
Proposition to incur debt, and issue Bonds to the extent of Five Hundred Thousand Dollars (\$500,000.00) as set forth in proposition No. 2.

Taxable valuation \$.....

..... Signature of Voter.

NOTICE TO VOTERS:—To vote in favor of the proposition submitted upon this ballot, place a cross (X) mark in the square after the word "Yes"; to vote against it place a similar mark after the word "No".

No. 98,741.
Civil District Court,
Parish of Orleans,
Filed Nov. 28,
1911.
(Signed) J. McCormick, Dy. Clerk.



Personally Before Me, the undersigned authority, came and appeared: Ben F. Estopinal, who being duly sworn, deposes and says that he is the Secretary of the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District, and that the foregoing
 161 ballot is an exact duplicate and sample of the ballot used at the special election held in this District on the 10th day of January, 1911.

BEN. F. ESTOPINAL,
*Secretary Bayou Terre aux
 Boeufs Drainage District.*

Sworn to and subscribed before me this July 18th, 1911.

C. C. FRIEDERICH, *Nt. Pub.*

Endorsed: No. 98741. Civil District Court, Parish of Orleans.
 Filed Nov. 28, 1911. J. McCormick, Dy. Clerk.

162

A. C. Gonzales,

Assessor, Parish of St. Bernard.

STATE OF LOUISIANA,
Parish of St. Bernard:

St. Bernard P. O., La., July 1, 1911.

I the undersigned assessor for the Parish and State aforesaid do hereby certify that according to my rolls there are two hundred twenty-two thousand six hundred sixty-seven and 50/100 (222,667 50/100) acres of land subject to taxation in the Bayou Terre aux Boeufs Drainage District.

A. C. GONZALES, *Assessor.*

Endorsed: No. 98741. Civil District Court, Parish of Orleans.
 Filed Nov. 28, 1911. J. McCormick, Dy. Clerk.

163 STATE OF LOUISIANA,
Parish of St. Bernard:

The undersigned Clerk of the 29th Judicial District Court of Louisiana, in and for the Parish of St. Bernard, duly Commissioned and qualified, does hereby Certify that the Process Verbal of the Compilation of the vote cast at the Special Election held in the Parish, on the 10th day of January, 1911, for the purpose of levying a Special tax for the Bayou Terre aux Boeufs Drainage District and to authorize the said Board of Commissioners for the Bayou Terre aux Boeufs District to issue bonds, was duly filed in this office, on the 12th day of January, 1911.

Clerk's Office, Parish of St. Bernard, June 30th, 1911.

JAMES D. ST. ALEXANDRE, *Clerk.*

Endorsed: No. 98741. Civil District Court, Parish of Orleans.
 Filed Nov. 28, 1911. J. McCormick, Dy. Clerk.

164 STATE OF LOUISIANA:

I, the undersigned, Assistant Secretary of State of the State of Louisiana, do hereby certify that—

A certified copy of process verbal by the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, the authority ordering an election for a special tax of sixteen (16¢) cents per acre to be held throughout the Bayou Terre-aux-Boeufs Drainage District on the 10th day of January, 1911, certifying that the said election was duly held on the said date and purporting to show the result of the votes cast at the said election as canvassed by the said authority, was filed in this office on this the 12th day of July, A. D. 1911, under the provisions of Section 15 of Act No. 256 of the Session Acts of the General Assembly of this State for the year 1910, and was also recorded in the archives of this office in book "Special Elections," No. 1, Folio —.

Given under my signature authenticated with the impress of my Seal of office at the City of Baton Rouge, this 12th day of July, A. D. 1911.

EMILE J. O'BRIEN, JR.,
Assistant Secretary of State.

165 *Resolution by Mr. Adam Estopinal, Seconded by Mr. Frank Massa.*

Whereas: Mr. Geo. H. Randolph has offered to purchase twenty (20) bonds of One Thousand Dollars (\$1000) each, of the Five Hundred Thousand bond issue voted on the 10th of January, 1910 in this District at par and accrued interest, subject to examination by his attorney; and

Whereas: On examination by his attorney, he declines to take these bonds on the ground that they were not legally voted by the people of this District, and that conditions precedent to their issue and to the voting thereof had not been complied with; and

Whereas: This Board is satisfied that these bonds are the legal and valid obligations of this District, and should be sold at par in accordance with law, and that no legal objection exist or should exist to prevent their sale;

Therefore Be It Resolved: That the attorney of this Board, is hereby instructed to file suit immediately to compel the specific performance of the agreement made by ——— with the President of this Board to purchase twenty (20) bonds as above set forth; and the attorney is hereby given authority to proceed herein as the conditions may require.

Endorsed: No. 98741. Civil District Court, Parish of Orleans.
Filed Nov. 28, 1911. J. McCormick, Dy. Clerk.

166 I, B. F. Estopinal, duly qualified as Secretary-treasurer of the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District, for the Parish of St. Bernard, State of Louisiana, do hereby certify that the foregoing pages are a true and correct copy of all the proceedings leading up to the bond issue of Five Hundred Thousand Dollars of bonds of the said Drainage District, voted by the people of said district, on January 10, 1911, and that the original of said proceedings are part of the records of my office as Secretary of the Board of Commissioners of said Drainage District.
(Signed) BEN. F. ESTOPINAL,

Secty.-Treas.

Endorsed: No. 98741. Civil District Court, Parish of Orleans.
Filed Nov. 28, 1911. J. McCormick, Dy. Clerk.

167 *Proceedings Had in the Supreme Court of the State of Louisiana.*

(Transcript of Appeal Filed.)

Filed May 26th, 1917. (Signed) Percy J. Heines, Deputy Clerk.

Supreme Court of Louisiana.

No. 22637.

GODCHAUX COMPANY, Incorporated, Appellant,

vs.

ALBERT ESTOPINAL, JR., Sheriff of the Parish of St. Bernard, Appellees.

(*Motion to Advance Cause.*)

Supreme Court of Louisiana.

No. 22637.

GODCHAUX Co., Inc., Plaintiff and Appellant,

vs.

ALBERT ESTOPINAL, JR., Sheriff, and BOARD OF COMMISSIONERS OF BAYOU TERRE-AUX-BOEUF'S DRAINAGE DISTRICT, Defendants and Appellees.

On motion of defendants and appellees, through N. H. Nunez, District Attorney, and Wm. Winans Wall, Attorney, representing defendants, and on suggesting to the court that in this suit the collection of acreage taxes levied by the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to pay the principal and

interest of its bond issues, amounting to more than \$600,000.00, proceeds of which were used in constructing a drainage system in said District, has been enjoined; that, by reason thereof, the Bayou Terre-aux-Boeufs Drainage District is in default in the payment of interest on said bond issues, which have been sold broadcast throughout the United States, and are largely held by tutors, guardians, trustees and others ill able to endure the default of said interest; that the Bayou

168 Terre-aux-Boeufs Drainage District is a political sub-division of the State of Louisiana; that this suit involves the public fisc, is one of great public importance, any delay will work great hardship on a large number of innocent persons, and that it is entitled to trial with special preference in this court by law and the rules of this court:

It is ordered by the court that this case be fixed for trial with preference on the — day of June, 1917.

Affidavit.

Personally came and appeared before me, the undersigned authority, Wm. Winans Wall, who being first by me duly sworn, deposes and says: that he is attorney at law for defendants and appellees in the above numbered and entitled cause, and that all the facts stated in this motion are true.

(Signed)

WM. WINANS WALL.

Subscribed and sworn to before me at New Orleans, La., this 26th day of May, 1917.

(Signed)

CHARLES SCHNEIDAU,

[SEAL.]

Not. Pub.

Certificate.

I hereby certify that I have this day filed a copy of this motion on Foster, Milling, Saal & Milling, attorneys for plaintiff and appellant.

New Orleans, La., May 26th, 1917.

(Signed)

WM. WINANS WALL,

Attorney for Defendants and Appellees.

(Endorsed:) No. 22637. Supreme Court of Louisiana. Godchaux Co., Inc., Plaintiff and appellant, versus Albert Estopinal, Jr., Sheriff, and Board of Commissioners of Bayou Terre-aux-Boeufs Drainage District, Defendants and appellees. Motion to Advance. Filed & Entered May 26, 1917. (Signed) Paul E. Mortimer, Clerk.

169 *(Entering Order to Advance Cause.)*

(Extract from Minutes.)

New Orleans, Saturday, May 26th, 1917.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Walter B. Sommerville and Charles A. O'Niell, Associate Justices.

Absent: Alfred D. Land, Associate Justice.

No. 22637.

GODCHAUX COMPANY, Inc.,

VS.

ALBERT ESTOPINAL, JR., Sheriff, et al.

On motion of W. W. Wall and N. H. Nunez, of counsel for the defendants and appellees: It is ordered by the Court that this cause be fixed for trial by preference.

(Cause Called, Argued and Continued.)

(Extract from Minutes.)

New Orleans, Friday, October 12th, 1917.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Walter B. Sommerville, Charles A. O'Niell and Paul Leche, Associate Justices.

No. 22637.

GODCHAUX COMPANY, Inc.,

VS.

ALBERT ESTOPINAL, JR., Sheriff of the Parish of St. Bernard.

This cause came on this day to be heard, and the Court having listened to the argument of Mr. R. C. Milling, counsel for the plaintiff and appellant, until the hour of adjournment, the Court ordered the cause to be continued until Monday, the 29th day of October, 1917, as an open cause.

(Cause Called, Argued, and Continued.)

(Extract from Minutes.)

New Orleans, Monday, October 29th, 1917.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Walter B. Sommerville, Charles A. O'Niell and Paul Leche, Associate Justices.

No. 22637.

GODCHAUX COMPANY, Inc.,

VS.

ALBERT ESTOPINAL, JR., Sheriff of the Parish of St. Bernard.

This cause, continued from Friday, the 12th day of October, 1917, came on this day further to be heard and was argued by counsel. Mr. W. W. Wall opened for the defendant and appellee. Mr. R. E. Milling replied for the plaintiff and appellant, and having occupied the attention of the Court until the hour of adjournment, the Court ordered the cause to be continued to Tuesday, the 30th day of October, 1917, as an open cause.

(Cause Called, Argued and Submitted.)

(Extract from Minutes.)

New Orleans, Tuesday, October 30th, 1918.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Walter B. Sommerville, Charles A. O'Niell and Paul Leche, Associate Justices.

No. 22637.

GODCHAUX COMPANY, Inc.,

VS.

ALBERT ESTOPINAL, JR., Sheriff of the Parish of St. Bernard.

171 This cause, continued from yesterday, came on this day further to be heard, and the Court having listened to the argument of Mr. R. E. Milling, for the plaintiff and appellant, took the cause under advisement.

(Final Judgment.)

(Extract from Minutes.)

New Orleans, Thursday, January 3rd, 1918.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Walter B. Sommerville, Charles A. O'Niell and Paul Leche, Associate Justices.

His Honor, Mr. Justice Leche, pronounced the opinion and judgment of the Court in the following case:

No. 22637.

GODCHAUX COMPANY, Incorporated,

vs.

ALBERT ESTOPINAL, JR., Sheriff of the Parish of St. Bernard.

The judgment appealed from is affirmed. .

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(Opinion of the Court.)

UNITED STATES OF AMERICA,

State of Louisiana:

Supreme Court of the State of Louisiana.

New Orleans, Thursday, Jany. 3, 1918.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice; Olivier O. Provosty, Walter B. Sommerville, Chas. A. O'Niell, Paul Leche, Associate Justices.

His Honor, Mr. Justice Leche, pronounced the opinion and Judgment of the Court in the following case:

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Supreme Court of Louisiana.

No. 22637.

GODCHAUX Co., Inc.,

vs.

ALBERT ESTOPINAL, JR., Sheriff, et al.

Appeal from the 29th Judicial District Court, Parish of St. Bernard,
Hon. R. Emmet Hingle, Judge.

LECHE, J.:

The Godchaux Company, Incorporated, enjoined the Sheriff and ex officio tax collector of the Parish of St. Bernard from enforcing

the collection of a drainage tax and prays for a decree against said tax collector and the Bayou Terre aux Boeufs Drainage District, declaring said tax illegal, null and void. From a judgment dissolving said injunction and refusing the relief prayed for, plaintiff then took the present appeal.

The facts are that the Godchaux Company owns the "Contreras" plantation which is situated in the Parish of St. Bernard and within the limits of the Bayou Terre aux Boeufs Drainage District. A bayou, which as some time in the past, had been a running stream but which had become dry, as sediment filled and raised the bottom of it, called the Bayou Terre aux Boeufs, runs through and divides the said Contreras Plantation. The lands along the banks of the said bayou are comparatively high, but slope down towards the rear of the plantation, where they become marsh or prairie lands, practically level with the waters of the Gulf of Mexico.

Some years ago, with a view of dredging the bayou Terre aux Boeufs and of establishing and building a system of drainage for all the lands situated in the surrounding country and including the plaintiff's plantation, the Bayou Terre aux Boeufs Drainage District was, pursuant to the laws of this State, chartered and organized.

Several special elections were held and in accordance with the vote of a majority in amount and number, of the property tax payers, qualified to vote under the Constitution and laws of 174 the State, an ad valorem tax of five mills and two acreage taxes, one of six cents and another of three cents were levied and assessed against all the property within the Drainage District. On August 28th, 1912, another election was held, ratifying the former levies of a five mill ad valorem tax and the six and three cents acreage taxes, and also levying an additional acreage tax of sixteen cents per acre, on all the lands situated within the drainage district. Thereupon these taxes were funded into bonds, in the sum of Five Hundred Thousand Dollars, all of which, except Forty Thousand Dollars, have been sold, and the proceeds were spent in carrying out the system of drainage inaugurated by the Board of Commissioners of the Drainage District.

Plaintiff does not contest the legality or validity of the ad valorem tax nor of the six and three cents acreage taxes. It contends that it is not liable for the sixteen cents acreage tax, for the reason that said tax was levied without proper authority, and, in the alternative, in case the Court should hold that there was authority for the levy of said tax, it contends that its marsh lands, forming part of the Contreras plantation, amounting to 3635.52 acres, which are not subject to gravity drainage, have not been and will not be benefitted by the payment of said tax and if compelled to pay the same, it will be deprived of its property without due process of law and in violation of the Fourteenth Amendment to the Constitution of the United States.

It is admitted that the sixteen cents per acre, acreage tax, was levied annually, and that it was paid by plaintiff for the years 1912, 1913 and 1914, and it appears from the record, that the present proceedings to annul and avoid said tax and to enjoin its collection was

only filed on May 29th, 1916. The record also contains evidence, introduced, however, over the objection of defendants, that there are approximately 565 acres of land, on the Contreras plantation, subject to gravity drainage and that the rest of said plantation consisting of 3635.52 acres mostly marsh, cannot be drained by gravity.

Against this demand, various defenses were made, only one of which, we propose to discuss, as we believe the fundamental law of the State places it beyond the power of the Court to grant the relief prayed for by plaintiff.

The second and last clause of paragraph 3 of article 281 of the Constitution, provides that "all bonds heretofore issued under and by virtue of this article 281 of the Constitution by the governing authority of any subdivision." (which is elsewhere defined
175 as including a drainage district), "which have heretofore not been declared invalid by a judgment of a Court of last resort in the State of Louisiana and more than sixty (60) days have elapsed since the promulgation of the proceedings evidencing the issuing of said bonds, are hereby recognized and declared to be valid and existing bonds and obligations of the district or subdivision issuing the same, and no Court shall have jurisdiction to entertain any contest wherein their validity or constitutionality is questioned."

The foregoing amendment to article 281 of the Constitution, was adopted in November 1914, and had been in force more than one year when on May 29th, 1916, the present suit was filed.

It therefore follows that this Court is without jurisdiction, unless as contended by plaintiff, this is not a suit contesting the validity of the bonds, and if it — such a suit, unless as further contended by plaintiff, said bonds were not issued under and by virtue of article 281 of the Constitution.

We do not believe *the* either of these last two contentions of plaintiff are maintainable.

As to the first, it is shown by the record, that if plaintiff's lands and all other lands of the same character, situated in the Bayou Terre aux Boeufs Drainage District, are declared not subject to the payment of the sixteen cents acreage tax, then the bonds, into which said tax was funded, and of which Four Hundred and Sixty Thousand Dollars in amount, have been issued and sold, will for the lack of funds, be dishonored and there will be a default in the payment of interest thereon. It is then apparent that if the fund, which consists of the very same taxes that plaintiff is attempting to avoid, and out of which only, the bonds may be paid, is destroyed, the bonds themselves are bound to be thereby affected and their validity impaired. As appropriately said by counsel for defendants, if the fund, the only foundation upon which the bonds rest, is taken away, the bonds themselves, the superstructure, are bound to fall: *Sublato fundamento, cadet opus*. Commenting upon the relation between bonds and the taxes assessed for their payment, the United States Supreme Court in the case of *Louisiana vs. Pilsbury*, 105 U. S. 288, says: "The annual tax was the security offered to the creditors; and it could not be afterwards severed from the contract without violating its stipulations, any more than a mortgage

176 executed as security for a note given for a loan could be subsequently repudiated as forming no part of the transaction."

It is true that no bondholder, as such, is party to this proceeding, but that fact can be of little comfort to plaintiff as it would only be additional ground to dismiss its suit for want of proper parties.

Having then reached the conclusion that plaintiff's demand, if granted, would impair the validity of the bonds, into which the tax in contestation was funded, the next enquiry is whether the said bonds were issued under and by virtue of article 281 of the Constitution. The affirmative of that proposition seems equally clear to us.

Plaintiff takes the position that its lands, being of such a character, that they have to be leveed and pumped in order to be drained and reclaimed, could only be subjected to an acreage tax upon the petition of not less than a majority in acreage of the property taxpayers, resident and nonresident, in the area to be affected, as provided in paragraph 4 of article 281 of the Constitution, as that article stood after its amendment of 1910. It further claims that the sixteen cents acreage tax not having been levied in accordance with the provisions of said paragraph, the Board of Commissioners was without authority to assess the same and therefore that the bonds into which said tax was funded are not such bonds as are protected from being assailed in the Courts of this State, under the quoted amendment to article 281, adopted in November, 1914. In other words, we understand plaintiff's contention to be that the forms prescribed by Art. 281 not having been observed by the defendant drainage district, the said bonds were therefore not issued under and by virtue of Art. 281 of the constitution and are subject to attack, and not protected by the prescription amendment to Art. 281 adopted in 1914.

Plaintiff, in attempting to evade the effect of the curative prescription, provided for in the last clause of Art. 281, as already quoted herein, asks us to do the very thing which we are therein inhibited from doing; it asks us to enquire into the validity of the tax and therefore into the validity of the bonds in order to ascertain whether the bonds were issued under and by virtue of Art. 281.

It is a sufficient answer to this contention on its part, to say that the bonds purport on their face to have been issued under and by

177 virtue of Art. 281 of the constitution; that if there was any irregularity or informality in their issuance, it is cured by the quoted constitutional prescription; and that if on the other hand it were necessary to show that all the forms and conditions of the said article 281 have been complied with in the issuance of said bonds, before the prescriptive provision could be applied, then that provision would be rank superfluity and become meaningless.

We are therefore of the opinion that plaintiff's suit attacks and questions the validity of the Bayou Terre aux Boeufs Drainage District bonds, issued in the sum of Five Hundred Thousand Dollars, by the Commissioners of that District by authority of an election held in said District on August 28, 1912; that said bonds were issued under and by virtue of article 281 of the constitution and that therefore the Courts of this State, whose sole source of power

and authority is derived from the constitution, are without jurisdiction to entertain said suit.

The conclusions which we have thus reached, are directly in conflict with our ruling in the case of Shaw v. Board of Commissioners, 138 L. 923, where we held that an attack upon a pledge did not of necessity, involve an attack upon the bond which it secures. That ruling may be absolutely correct in some instances but it is overruled in so far as it affects the issues in the present case.

The judgment appealed from is affirmed.

Syllabus.

A suit seeking to annul, set aside and avoid an acreage tax levied for drainage purposes and which has been funded into negotiable bonds, and without which the payment of such bonds cannot be met, constitutes an attack upon the bonds themselves; and where such bonds have been issued under and by virtue of article 281 of the Constitution, the Courts of this State are, by the concluding clause of paragraph 3 of said article adopted in November, 1914, shorn of all jurisdiction to entertain such suits, when instituted more than sixty days after promulgation of the proceedings evidencing the issuing of said bonds.

178

(Application for Rehearing.)

Supreme Court, State of Louisiana.

No. 22637.

GODCHAUX COMPANY, Inc.,

vs.

ALBERT ESTOPINAL, JR., Sheriff, et al.

To Their Honors the Chief Justice and the Associate Justices of the Supreme Court of the State of Louisiana:

The application of the Godechaux Company, Incorporated, plaintiff, appellant, in the above styled and numbered cause, with respect represents:

That there has recently been handed down an opinion and decree of your Honorable Court in favor of the defendants, appellees, and against your plaintiff, appellant, in which decree there are numerous errors to the prejudice of your applicant, and among many others, it points out especially errors as follows:

I.

The Court erred in holding that an attack upon the validity of the tax is an attack upon the validity of the bonds, and in thus holding, it has overruled the decision of Shaw vs. Board of Drainage

Commissioners, 138 La. 923, rendered by your Honorable Court where the same tax was in contest, and upon which plaintiff, appellant, relied, and therefore, if the said decision was to be overruled, erred in not remanding this case as requested by applicant to afford it an opportunity to show that the bonds themselves were invalid in that they were disposed of for less than par in direct violation of the express prohibition of Article 281 of the Constitution, and that the purchasers receiving the bonds were parties thereto, and that regardless of what disposition has been made of the bonds, no purchaser has ever paid par therefor. For the Court to refuse to grant this request to remand, after the court has decided to overrule the case that we considered *stari decisis* on that question and
 179 deprive your plaintiff of the right to make this defense, is to deprive it of the due process of law in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

II.

The Court erred in holding that it was any part of the duty of the plaintiff to have made the bondholders parties defendant to the suit in face of the decision above referred to.

III.

The Court erred in holding that the bonds herein referred to were issued under Article 281 of the Constitution, for the reason that Article 281 of the Constitution in effect prohibits the issuing of bonds or the levying of taxes based upon an election, against lands that must be leveed and pumped in order to be drained and reclaimed, the Article not permitting taxes to be levied by a vote of the property taxpayers upon land susceptible of gravity drainage, and any attempt of the taxpayers of a drainage district by a vote to authorize the levying of taxes or the funding of the same into bonds on lands that can only be taxed or against which bonds only can be issued by a petition of landowners, is violative of Article 281 of the Constitution, instead of in conformity therewith.

IV.

The Court erred in not giving effect to the Statutes of Louisiana and to the common law which require corresponding benefits to land upon which a forced contribution is imposed, and to authorize a forced contribution to be imposed upon appellant's lands, to which it is admitted no benefits will accrue, will deprive plaintiff of its property without due process of law, and violates the Fifth and Fourteenth Amendments of the Constitution of the United States.

V.

The Court erred in holding that the Amendment to Article 281 of the Constitution deprives it of jurisdiction to hear and

180 determine this contest, and in refusing to take jurisdiction on account of said Constitutional provision and in thus ruling, the Court further erred:

(a) In overruling the case of *Shaw v. Board of Commissioners*, 138 La. 923, wherein this identical question was presented to the Court, and the Court held that the Constitutional Amendment did not apply so as to deprive the Court of jurisdiction;

(b) In holding that the Constitutional Amendment does apply and that it prevents your Honorable Court from taking jurisdiction of the cause and hearing and determining it;

(c) In enforcing and giving effect to the Amendment to Article 281 of the Constitution and refusing to entertain jurisdiction of this contest, you are depriving the plaintiff of a vested right of action, without due process of law, in that you are refusing to permit him to be heard upon the question as to whether or not this tax is illegal, whether or not his property is benefitted, and to enforce the tax, practically is confiscating its property, which is violative of the Fifth and Fourteenth Amendments to the Constitution of the United States.

VI.

Your applicant further shows that the Amendment to Article 281 of the Constitution, which declares that no court shall have jurisdiction to hear and determine any action calling in contest the validity of the bonds issued under said Article, violates the Fifth and Fourteenth Amendments to the Constitution of the United States, in that it deprives your applicant of its vested right of action (his property) without due process of law, and the Court by giving effect to said amendment erred.

VII.

The Court further erred in holding that the obligation of the Contract existing in favor of the holder of the bonds would be impaired by the decision of the Court in permitting your applicant to urge his cause of action.

VIII.

181 Applicant shows that numerous other errors appear in the opinion, all of which will be pointed out in a brief to be filed in support of the application for rehearing.

Wherefore, it prays that this, its application for rehearing, be filed; after due consideration that same be allowed and a rehearing be granted, and upon further hearing that there be judgment in favor of your plaintiff, appellant, and against defendant, appellee, reversing the judgment of the lower court, pernetuating the injunction and forever prohibiting the said Sheriff from attempting to collect the forced contribution of 16 cents per acre against that por-

tion of the property of your applicant which must be leveed and pumped in order to be drained and reclaimed.

(Signed)

FOSTER, MILLING, SAAL &
MILLING,

Attorneys for Applicant.

(Endorsed:) No. 22637. Supreme Court State of Louisiana. Godchaux Company, Inc., vs. Albert Estopinal, Jr., Sheriff, et al. Application for rehearing. Filed Jany. 17, 1918. (Signed) Percy J. Heines, Deputy Clerk.

(Motion for Time to File Briefs.)

Supreme Court, State of Louisiana.

No. 22637.

GODCHAUX COMPANY, Incorporated,

vs.

ALBERT ESTOPINAL, JR., Sheriff, et al.

Upon motion of Foster, Milling, Saal & Milling, and on suggesting to the Court that an application for rehearing has been filed herein, but that brief was not filed therewith, and they desire additional time within which to file said brief, the reasons for not filing same at this time being that the member of the firm who has
182 handled this case has been serving as an associate member of a Legal Advisory Board of one of the local exemption boards of the United States Government in the City of New Orleans, and so much of his time has been taken up in performing the duties imposed upon him thereby, that he has not had an opportunity to re-examine the record so as to prepare said brief.

It is ordered that plaintiff, Godchaux Company, Incorporated, is granted until the 1st day of February, 1918, in which to file briefs in support of the application for rehearing filed herein.

Ordered and signed on this the 19th day of January, 1918.

(Signed)

CHARLES A. O'NIELL,

Associate Justice.

Endorsed: No. 22637. Supreme Court, State of Louisiana. Godchaux Company, Incorporated, vs. Albert Estopinal, Jr., Sheriff, et al. Motion for time to file briefs. Filed Jany. 17, 1918. (Signed) Percy J. Heines, Deputy Clerk.

(Rehearing Refused.)

(Extract from Minutes.)

New Orleans, Thursday, February 7th, 1918.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Walter B. Sommerville, Charles A. O'Niell and Paul Leche, Associate Justices.

No. 22637.

GODCHAUX COMPANY, Incorporated,

vs.

ALBERT ESTOPINAL, JR., Sheriff, Parish of St. Bernard.

By the Court: It is ordered that the rehearing applied for in this case be refused.

183 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify the foregoing One hundred and eighty two (182) pages to be a true and correct copy of the transcript of the proceedings had in the 29th Judicial District Court, Parish of St. Bernard, in a certain suit wherein Godechaux Company, Incorporated, was plaintiff, and Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, et al., were defendants; also, a true copy of a transcript entitled: "Proceedings leading to the issue of \$500,000.00 bonds Bayou Terre-aux-Boeuf Drainage District," filed in evidence by defendant on the 28th of November, 1916, in suit No. 1051 of the 29th Judicial District Court, and which, by agreement of counsel, was used in this cause in the Supreme Court; and, also, a true copy of all the proceedings had in this, the Supreme Court of Louisiana, on the appeal taken by the said plaintiff, bearing the No. 22,637 of the docket of this Court.

I further certify that blue prints marked "Plaintiff-1," and "D-1," are original documents in this suit, transmitted to the Supreme Court of the United States upon motion of counsel and order of this Court, in their original form.

I further certify that this transcript is made in accordance with precepts of counsel to be found at pages 200 and 203 of this transcript.

In witness whereof, I hereunto set my hand and affix the seal of the Court aforesaid, at the city of New Orleans, this the 18th day of April, Anno Domini, one thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

184 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Frank A. Monroe, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 18th day of April, Anno Domini, One thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice Supreme Court of Louisiana.

185 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, hereby certify that the Supreme Court of the State of Louisiana is the highest court of law in Louisiana, and that the Honorable Frank A. Monroe is the Chief Justice of said Court and that his signature to the above certificate is genuine.

In witness whereof, I hereunto set my hand and affix the seal of the Court aforesaid, at the city of New Orleans, this the 18th day of April, Anno Domini, One thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

(Original Petition for Writ of Error.)

Supreme Court of Louisiana.

No. 22637.

GODCHAUX COMPANY, Incorporated, Plaintiff and Appellant,

versus

ALBERT ESTOPINAL, JR., Sheriff of the Parish of St. Bernard, et al.,
Defendants and Appellees.

To the Honorable Frank A. Monroe, Chief Justice of the Supreme
Court of the State of Louisiana:

The application of the Godchaux Company, Incorporated, the
plaintiff and appellant in the above numbered and entitled suit,
through its Attorneys, Foster, Milling, Saal & Milling, with respect
represents:

I.

That it is a citizen of the United States of America, and of the State
of Louisiana.

II.

That in the above entitled matter, on the 3rd day of January,
1918, a final judgment was rendered against your relator by the Hon-
orable, the Supreme Court of the State of Louisiana, that being the
highest court of law or equity in said State.

III.

That upon the rendition of said judgment, your relator herein
made application to the Honorable, the Supreme Court of the State of
Louisiana, for a rehearing which, on the 7th day of February, 1918,
was denied.

IV.

Your applicant now shows that it is a corporation organized under
the laws of the State of Louisiana; that it owns a certain plantation in
the Parish of St. Bernard, State of Louisiana, known as the
187 Contreras Plantation, which plantation is situated upon the
Bayou Terre aux Boeufs in said Parish and contains four
thousand, two hundred and one and 4/100 (4,201.04) acres.

V.

That five hundred and sixty-five and 52/100 (565.52) acres of the
lands forming this plantation front on both sides of the Bayou Terre

aux Boeufs, and have a fall sufficient for them to drain naturally; that is, by gravity. The remaining lands of the plantation—three thousand, six hundred and thirty-five and $52/100$ (3,635.52) acres—are not susceptible of gravity drainage, but are low lands, commonly called “marsh or overflowed lands” in the State of Louisiana; are at all times covered by salt water, placed there by the action of the tide in the Gulf of Mexico; and are not susceptible of drainage and cultivation except by the construction of an expensive system of dykes and pumps.

VI.

That in the year 1906, the Police Jury of the Parish of St. Bernard, State of Louisiana, organized a drainage district embracing certain lands in that Parish, which drainage district is known as the “Bayou Terre aux Boeufs Drainage District,” and in this District was included all of the lands forming the Contreras Plantation belonging to your relator.

VII.

That the Board of Drainage Commissioners, on behalf of said Drainage District, have at various times called elections in said Drainage District for the purpose of voting taxes and assessments therein and funding the avails thereof into bonds, the said Drainage Commissioners in furtherance of the pretended authority vested in them, having levied and assessed taxes and assessments, and authorized the issuance of bonds as follows:

In the year 1909, said Board levied and ordered assessed and collected, an acreage tax of three (3) cents per acre, on all lands in the District, and funded the avails of this tax into bonds aggregating the amount of Sixty thousand dollars (\$60,000.00); and also levied and ordered assessed an ad valorem tax of five (5) mills on the dollar of all property assessed in the District, and funded the avails of that tax into bonds aggregating Forty thousand dollars (\$40,000.00).

On December 30, 1909, the Board of Commissioners levied and ordered assessed an acreage tax of six (6) cents per acre on the lands of the District, and funded the avails thereof into bonds in the sum of One hundred and sixty-five thousand dollars (\$165,000.00).

On August 28, 1912, the Board of Commissioners levied and ordered assessed and collected an acreage tax of sixteen (16) cents per acre on the lands in the District, and funded the avails thereof into bonds, aggregating Five hundred thousand dollars (\$500,000.00).

188 All taxes were levied, assessed and ordered collected for the full period of forty (40) years.

VIII.

In the year 1915, your relator refused to pay the taxes assessed against the marsh or swamp lands of Contreras Plantation, aggregating three thousand, six hundred and thirty-five and $52/100$

(3,635.52) acres, and upon the property being advertised for sale for the payment of said taxes, did apply for and secure a preliminary injunction, enjoining the sale of said plantation, it alleging that said taxes were illegally assessed in that there was no authority in the taxpayers, by election, to levy said acreage taxes or forced contributions, upon the marsh and swamp lands belonging to your relator, which were of the character that had to be leveed and pumped in order to be drained and reclaimed, in that such taxes could be levied and imposed under the Constitution and laws of the State of Louisiana only by a petition signed by landowners owning two-thirds of the acres of land to be affected, and did further allege that in any event, it received no benefits whatever from the drainage work being installed by the said Drainage Board and that to require it to pay said taxes under such circumstances, would be tantamount to taking its property without due process of law and would deny to it the equal protection of the law, all of which was violative of the Second and Fourteenth Amendments to the Constitution of the United States and of Articles 2 and 166 of the Constitution of the State of Louisiana.

IX.

That the District Court of the Parish of St. Bernard, State of Louisiana, upon the trial of the merits of said cause, did render a judgment adversely to your relator and dissolved said injunction, whereupon a suspensive appeal from said judgment was prosecuted to the Honorable, the Supreme Court of the State of Louisiana.

X.

Upon hearing, the Honorable Supreme Court of the State of Louisiana, did hold that it had no jurisdiction of said cause, in that the amendment to Article 281 of the Constitution of the State of Louisiana, adopted at the general election held in November, 1914, reading as follows:

189 "all bonds heretofore issued under and by virtue of this article 281 of the Constitution by the governing authority of any subdivision which have heretofore not been declared invalid by a judgment of a Court of last resort in the State of Louisiana and more than sixty (60) days have elapsed since the promulgation of the proceedings evidencing the issuing of said bonds, are hereby recognized and declared to be valid and existing bonds and obligations of the district or subdivision issuing the same, and no Court shall have jurisdiction to entertain any contest wherein their validity or constitutionality is questioned."

deprived said Honorable Court of jurisdiction in said cause, it holding that this action attacking the validity of the acreage taxes or forced contributions levied and imposed upon the marsh lands of your petitioner was an attack upon the bonds issued by the Bayou Terre aux Boeufs Drainage District and that therefore, under the

above-mentioned Article of the Constitution, said Court had no jurisdiction of said cause.

XI.

'That your relator applied for a re-hearing in said cause, one of the reasons urged as a ground for a re-hearing being that the said amendment to the Constitution of the State of Louisiana, as above quoted, was unconstitutional, null and void, and violated the Constitution of the United States as the terms of said amendment sought to divest your relator of its vested right of action to contest the validity of said acreage tax or forced contribution, in that it barred such right of action by divesting the Court of jurisdiction; and that therefore, the said constitutional amendment was violative of the provisions of the Second and Fourteenth Amendments to the Constitution of the United States, and deprived your relator of its property without due process of law and of the equal protection of the law.

XII.

That this application for re-hearing was refused by the Honorable, the Supreme Court of the State of Louisiana on the 7th day of February, 1918.

XIII.

That said judgment and decree of the Honorable, the Supreme Court of the State of Louisiana, works irreparable damage and injury to the rights of your applicant and that the only remedy that your applicant now has is by writ of error to the Honorable, the Supreme Court of the United States of America.

XIV.

Your applicant attaches hereto an assignment of error.

190 Wherefore, your applicant prays that a writ of error from the Supreme Court of the United States may issue in its behalf to the Supreme Court of the State of Louisiana for the correction of error so complained of, and that a transcript of record, proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States and on final trial that there be judgment by the Honorable the Supreme Court of the United States reversing the decree of the Supreme Court of the State of Louisiana, and that judgment be rendered in favor of your applicant as prayed for in its original petition.

FOSTER, MILLING, SAAL & MILLING,
Attorneys for Applicant.

R. C. MILLING,
Of Counsel.

Affidavit.

STATE OF LOUISIANA,

Parish of Orleans, City of New Orleans:

Before me, the undersigned authority, personally came and appeared, Mr. Charles Godchaux, who by me having been duly sworn, deposes and says that he is the President of the Godchaux Company, Incorporated; that he has read over the above and foregoing application, and that the facts and allegations therein contained are true and correct, except as to those made on information and belief and those affiant believes to be true.

CHARLES GODCHAUX.

Sworn to and subscribed before me this 4th day of April, 1918.

[Seal Robert C. Milling, Notary Public, Parish of Orleans.]

R. C. MILLING.

Order.

The above and foregoing petition having been read and considered, It Is Ordered that a writ of error issue herein, with a supersedeas, as prayed for, on applicant furnishing bond with sufficient security and conditioned according to law, in the sum of \$2,000.00 (two thousand dollars).

Dated April 4, 1918.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,

*Chief Justice Supreme Court of the State of Louisiana.*191 *(Original Assignment of Errors.)*

Supreme Court of Louisiana.

No. 22637.

GODCHAUX COMPANY, Incorporated, Plaintiff and Appellant,

versus

ALBERT ESTOPINAL, JR., Sheriff of the Parish of St. Bernard, et al.,
Defendants and Appellees.

Assignment of Errors on Writ of Error from the Supreme Court of
the United States to the Supreme Court of the State of Louisiana.

Now comes Godchaux Company, Incorporated, plaintiff in error,
and respectfully submits that in the record, proceedings, decision and

final judgment of the Supreme Court of the State of Louisiana, in the above-entitled matter there is manifest error in this, to-wit:

That the Supreme Court of the State of Louisiana in its opinion and decree in said cause, after reciting the facts and history of said cause and that the plaintiff was seeking to enjoin the collection of a sixteen (16) cents acreage tax levied against its lands, used the following language:

"Against this demand, various defenses were made, only one of which, we propose to discuss, as we believe the fundamental law of the State places it beyond the power of the Court, to grant the relief prayed for by plaintiff.

The second and last clause of paragraph 3 of article 281 of the Constitution, provides that 'all bonds heretofore issued under and by virtue of this article 281 of the Constitution by the governing authority of any subdivision,' (which is elsewhere defined as including a drainage district), 'which have heretofore not been declared invalid by a judgment of a Court of last resort in the State of Louisiana and more than sixty (60) days have elapsed since the promulgation of the proceedings evidencing the issuing of said bonds, are hereby recognized and declared to be valid and existing bonds and obligations of the district or subdivision issuing the same, and no Court shall have jurisdiction to entertain any contest wherein their validity or constitutionality is questioned.'"

And predicated its opinion and decree upon the provisions of said constitutional amendment above quoted, did hold that:

192 "We are therefore of the opinion that plaintiff's suit attacks and questions the validity of the Bayou Terre aux Boeufs Drainage District bonds, issued in the sum of Five Hundred Thousand Dollars, by the Commissioners of that District by authority of an election held in said District on August 28th, 1912, that said bonds were issued under and by virtue of article 281 of the Constitution and that therefore the Courts of this State, whose sole source of power and authority is derived from the Constitution, are without jurisdiction to entertain said suit."

Your relator now shows that the Supreme Court of the State of Louisiana in giving effect to the above-mentioned amendment to Article 281 of the Constitution of the State of Louisiana, has given effect to a state law which is violative of the Constitution of the United States of America, in that the said above-quoted amendment to the Constitution of the State of Louisiana, by depriving the Court of jurisdiction in cases therein mentioned, has barred a vested right of action (the property and right of your relator), to contest the validity of the acreage tax or forced contribution which relator claims was illegally levied and assessed upon its lands, thereby destroying the right vested in relator to resort to the Courts for the purpose of contesting the validity of said tax.

That for this reason said amendment to Article 281 of the Constitution of the State of Louisiana, above quoted, and the opinion and decree of the Honorable, the Supreme Court of the State of Louisiana, giving effect to said amendment, divest your relator of its

vested right of action, which vested right of action exists in your relator and is recognized by the laws of the State of Louisiana and the United States of America, and deprives it of its property without due process of law, and denies to it the equal protection of the law. That the said constitutional amendment, as well as the opinion and decree of the Honorable, the Supreme Court of the State of Louisiana, giving effect to said amendment, are violative of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

FOSTER, MILLING, SAAL & MILLING,
Attorneys for Plaintiff in Error.

R. C. MILLING,
Of Counsel.

1921½ [Endorsed:] No. 22637. Supreme Court, State of Louisiana. Godchaux Company, Incorporated, Plaintiff and Appellant, versus Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, et al., Defendants and Appellees. Petition for Writ of Error and Assignment of Errors. Foster, Milling, Saal & Milling, Attorneys. Filed April 4, 1918. Paul E. Mortimer, Clerk.

193 (Bond for Writ of Error.)

Supreme Court, State of Louisiana.

No. 22637.

GODCHAUX COMPANY, Incorporated, Plaintiff in Error,

vs.

ALBERT ESTOPINAL, JR., Sheriff of the Parish of St. Bernard, et al.,
Defendants in Error.

Know all men by these presents: That we Godchaux Company, Incorporated, as principal, and Globe Indemnity Company, as surety, are held and firmly bound unto Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, and the Board of Drainage Commissioners of the Bayou Terre aux Boeufs Drainage District of the Parish of St. Bernard in the full and true sum of Two Thousand dollars (\$2,000.00), to be paid the said obligees, their successors, representatives and assigns, to the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 5th day of April, A. D., 1918.

Whereas, the above named Godchaux Company, Incorporated, plaintiff in error, have prosecuted a writ of error in the Supreme Court of the United States of America to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Louisiana:

Now, Therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute its said writ of

error and to effect and answer all costs and damages if it fail to make good its plea, then this obligation to be void; otherwise to remain in full force and effect.

(Signed) By GODCHAUX COMPANY, INCORPORATED,
CHARLES GODCHAUX. [SEAL.]

(Signed) By GLOBE INDEMNITY COMPANY,
J. G. PEPPER, [SEAL.]

Its Attorney in Fact.

194

Signed, Sealed and Delivered in the presence of the undersigned witnesses:

(Signed) WM. H. KLINE SMITH.

(Signed) R. C. MILLING.

STATE OF LOUISIANA,

Parish of Orleans:

On this, the 5th day of April, A. D. 1918, before me, the undersigned authority, personally came and appeared Mr. Charles Godchaux, to me well known, who executed the foregoing bond for and on behalf of the Godchaux Company, Incorporated, who being by me first duly sworn, declared and acknowledged that he is the President of said Company and duly authorized to execute said bond, and that he executed the same as the free act and deed of the said Godchaux Company, Incorporated.

And also appeared Mr. J. G. Pepper, a resident of the City of New Orleans, who being by me first duly sworn, declared and acknowledged that he is the duly authorized agent of Globe Indemnity Company, the surety on said bond, and is authorized to execute the said bond on behalf of said surety and that said surety is well worth the sum of Two thousand dollars (\$2,000.00) over and above all debts and liabilities and property exempt from execution.

(Signed) CHARLES GODCHAUX.

(Signed) GLOBE INDEMNITY COMPANY,
By J. G. PEPPER, [SEAL.]

Its Attorney in Fact.

Sworn to and subscribed before me this 5th day of April, A. D. 1918.

[SEAL.] (Signed)

R. C. MILLING,

Not. Pub.

I hereby approve the foregoing bond and the surety thereon. Dated this 5th day of April, A. D. 1918.

[SEAL.] (Signed)

FRANK A. MONROE,

*Chief Justice of the Supreme Court
of the State of Louisiana.*

Endorsed: No. 22,637. Supreme Court, State of Louisiana. Godchaux Company, Incorporated, Plaintiff in error, vs. Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, et al., Defendants

in Error. Appeal Bond. Filed April 5th, 1918. (Signed) Percy J. Heines, Deputy Clerk.

195 (Original Writ of Error.)

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Godchaux Company, Incorporated, plaintiff and appellant, and Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, and the Board of Drainage Commissioners of the Bayou Terreaux-Boeufs Drainage District, defendants and appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under

196 the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Godchaux Company, Incorporated, plaintiff and appellant, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, the 5th day of April, in the year of our Lord one thousand nine hundred and eighteen.

[Seal District Court U. S., Eastern Dist. La., N. O. Div.]

H. J. CARTER,

Clerk of the District Court of the United States
for the Eastern District of Louisiana.

Allowed by:

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,

Chief Justice Supreme Court of Louisiana.

[Endorsed:] No. 22,637. Godchaux Company, Incorporated, Plaintiff-in-error, versus Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, et al., Defendants-in-error. Writ of Error. Filed April 5th, 1918. Percy J. Heines, Deputy Clerk.

197

(Certificate of Lodgment.)

UNITED STATES OF AMERICA,

State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, hereby certify that there was lodged with me, as such Clerk, on April 4th, 1918, in the cause entitled: Godchaux Company, Incorporated, Plaintiff-in-error, vs. Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, et al., Defendants-in-error:

1st. The original petition for writ of error, as herein set forth.

2nd. The original assignment of errors, as herein set forth.

I further certify that there was lodged with me in said case, on April 5th, 1918:

1st. The bond for writ of error, a certified copy of which is herein set forth.

2nd. The original Writ of error, as herein set forth.

3rd. Three copies of the writ of error; one copy to be served on Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, Defendant-in-error; one copy to be served on Board of Drainage Commissioners of the Bayou Terre Aux Boeufs Drainage District, defendant-in-error; and one copy to be lodged in my office.

In witness whereof, I hereunto set my hand and affix the seal of the Court aforesaid, at the city of New Orleans, this the 18th day of April, Anno Domini, One thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,

Clerk Supreme Court of Louisiana.

198 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Board of Drainage Commissioners of the Bayou Terre Aux Boeufs Drainage District, through its President, Adam Estopinal, St. Bernard P. O., St. Bernard, La., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, at New Orleans, wherein Godchaux Company, Incorporated, is plaintiff in error, and Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, State of Louisiana, and the Board of Drainage Commissioners of the Bayou Terre aux Boeufs Drainage District are the defendants in error, to show cause, if any there be, why the judgment rendered against the said Godchaux Company, Incorporated, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of United States, this 5th day of April, in the year of our Lord one thousand nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,

Chief Justice of the Supreme Court of the State of Louisiana.

198¹/₂ Received by U. S. Marshal, New Orleans, La., April 4th, 1918, and on April 6, 1918, I served a copy hereof on the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District by handing the same to Adam Estopinal, President of said Drainage District in person.

FRANK M. MILLER,

U. S. Marshal,

By E. P. REUTER, *Deputy.*

[Endorsed:] Supreme Court of the State of Louisiana. No. 22, 637. Godchaux Company, Incorporated, Plaintiff in Error, vs. Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, et al., Defendants in Error. Citation for Return. Sheriff's —. Filed April 18th, 1918. Percy J. Heines, Deputy Clerk.

199 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, State of Louisiana, St. Bernard P. O., St. Bernard, Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Wash-

ington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, at New Orleans, wherein Godchaux Company, Incorporated, is plaintiff in error, and Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, State of Louisiana, and the Board of Drainage Commissioners of the Bayou Terre aux Boeufs Drainage District are the defendants in error, to show cause, if any there be, why the judgment rendered against the said Godchaux Company, Incorporated, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of United States, this 5th day of April, in the year of our Lord one thousand nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,

Chief Justice of the Supreme Court of the State of Louisiana.

199½ Received by U. S. Marshal, New Orleans, La., April 4th, 1918, and on April 6, 1918, I served a copy hereof, on Albert Estopinal, Sheriff of the Parish of St. Bernard, La., by handing the same to him in person.

FRANK M. MILLER,

U. S. Marshal,

By E. P. REUTER, *Deputy.*

[Endorsed:] Supreme Court of the State of Louisiana. No. 22-637. Godchaux Company, Incorporated, Plaintiff in Error, vs. Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, et al., Defendants in Error. Citation for Return. Sheriff's —. Filed April 18th, 1918. Percy J. Heines, Deputy Clerk.

200 (*Præcipe of Counsel for Plaintiff in Error.*)

Supreme Court, State of Louisiana.

No. 22637.

GODCHAUX COMPANY, Incorporated, Plaintiff-in-Error,
vs.

ALBERT ESTOPINEL, JR., Sheriff of the Parish of St. Bernard, et al.,
Defendants-in-Error.

Præcipe.

Godchaux Company, Incorporated, Plaintiff in Error, requests the Clerk of the Supreme Court of the State of Louisiana to incorporate the following documents in the transcript of appeal:

(1) The original petition of the Godchaux Company, Incorporated, filed May 29, 1916, together with affidavit and order thereon.

(2) The supplemental and amended petition of the Godchaux Company, Incorporated, filed July 10, 1916, together with affidavit and order thereon.

(2) Supplemental and amended petition of the Godchaux Company, Incorporated, filed July 27, 1916, together with the affidavit and order thereon, as well as affidavit of H. C. Smith, Civil Engineer.

(4) Exception on behalf of defendant, filed July 27, 1916, together with a certificate of counsel thereto attached.

(5) Exception of no cause of action filed by the defendant on October 9, 1916, together with certificate of counsel thereto attached.

(6) Answer of the defendant Sheriff filed on October 9, 1916, together with the affidavit thereto attached.

(6½) Answer of Drainage Board filed November 28, 1916, and affidavit thereon.

(7) Assessment of the Godchaux Company, Incorporated, offered in evidence by counsel for plaintiff, filed November 28, 1916.

(8) Resolutions of the Board of Drainage Commissioners of the Bayou Terre aux Boeufs Drainage District, dated St. Bernard, La., August 28, 1912, offered in evidence by counsel for defendant, filed November 28, 1916.

(9) Reasons for judgment and judgment of R. Emmet Hingle, Judge, of date April 27, 1917, filed April 27, 1917.

(10) Judgment of R. Emmet Hingle, Judge, granting issue of preliminary injunction prohibiting sale of property, of date July 28, 1916, filed July 28, 1916.

201 (11) Judgment in favor of defendants, of date April 27, 1917.

(12) Petition of the Godchaux Company, Incorporated, for appeal filed May 5, 1917, together with affidavit and order thereon.

(13) Appeal bond of the Godchaux Company, Incorporated, filed May 5, 1917.

(14) Citation of appeal served on Albert Estopinal, Jr., Sheriff, filed May 14, 1917, together with return thereon.

(15) Citation of appeal served on the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, filed May 16, 1917, and return thereon.

(16) Agreement of counsel as to transcript, filed May 25, 1917.

(17) Testimony and notes of evidence of Charles Godchaux and H. C. Smith, filed November 28, 1916.

(18) Testimony of A. G. Munding, filed November 28, 1916.

(19) Note of evidence taken on the trial of the cause, filed November 28, 1916.

(20) Opinion and decree of the Honorable the Supreme Court of the State of Louisiana.

(21) Application for rehearing filed on behalf of the Godchaux Company, Incorporated.

(22) Refusal of rehearing on behalf of the Godchaux Company, Incorporated.

(23) Extract from the Minutes of the Honorable the Supreme Court of the State of Louisiana.

(24) Application of the Godechaux Company, Incorporated, for writ of error and order thereon.

(25) Bond of the Godechaux Company, Incorporated, filed in the Supreme Court of the State of Louisiana for writ of error and super-sedeas.

(26) Copy of the citation and writ of error served upon Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, together with return of the United States Marshal thereon.

(27) Copy of citation and service of writ of error upon the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District, together with the return of United States Marshal thereon.

(28) Assignment of Errors.

(29) Writ of Error.

(30) Map marked "Plaintiff-1."

(31) Map marked "D-1."

202 (Signed)

R. C. MILLING,

(Signed)

FOSTER, MILLING, SAAL &
MILLING,

Attorneys for Plaintiff in Error.

Endorsed: No. 22637. Supreme Court, State of Louisiana. Godechaux Company, Inc., Plaintiff in Error, vs. Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, et al., Defendants in Error. Præcipe of Counsel for Plaintiff in Error. Filed April 13, 1918. (Signed) Percy J. Heines, Deputy Clerk.

203 *(Præcipe of Counsel for Defendants in Error.)*

No. 22637.

GODCHAUX COMPANY, Inc., Plaintiff in Error,

vs.

ALBERT ESTOPINAL, JR., Sheriff of the Parish of St. Bernard, et al.,
Defendants in Error.

Honorable Paul E. Mortimer, Clerk of the Supreme Court of Louisiana, city.

DEAR SIR: You are hereby instructed and requested to copy in the transcript in this cause being prepared for the Supreme Court of the United States, on behalf of the Defendants in Error, everything appearing in the transcript on file in the Supreme Court of Louisiana, under the No. 22637 of the docket of that court.

You are further instructed and requested to copy in the said transcript, from the transcript in No. 19387 of the Supreme Court of Louisiana, all proceedings leading to the issue of \$500,000.00 of bonds by the Bayou Terre-aux-Boeufs Drainage District, voted January 10, 1911, and offered in evidence on the trial of this cause in

said District Court, as appears from a note of evidence at the bottom of page 128 in transcript No. 22637.

Yours very respectfully,

(Signed)

WM. WINANS WALL,
*Attorney for Albert Estopinal, Jr., Sheriff, and
Board of Commissioners of Bayou Terre-aux-
Boeufs Drainage District, Defendants in
Error.*

I certify that a copy of this præcipe has been served on counsel for Plaintiff in Error.

(Signed)

WM. WINANS WALL, *Attorney.*

Endorsed: No. 22637. Supreme Court Louisiana. Godchaux Company, Inc., plaintiff in error, vs. Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, et al., defendants in error. Præcipe of counsel for defendants in error. Filed April 15th, 1918. (Signed) Percy J. Heines, deputy clerk.

204 (*Motion to Withdraw Original Maps and Order.*)

Supreme Court, State of Louisiana.

No. 22637.

GODCHAUX COMPANY, Inc., Plaintiff in Error,

vs.

ALBERT ESTOPINAL, JR., Sheriff of the Parish of St. Bernard, et al.,
Defendants in Error.

On motion of Foster, Milling, Saal & Milling, Attorneys for Godchaux Company, Inc., plaintiff in error, and upon suggesting to the Court that there is on file in the transcript of appeal herein, two certain maps or blueprints, one of said maps being marked "Plaintiff-1," and the other of said maps being marked "D-1,"

And upon further suggesting to the Court that they desire that said maps in the original, should be withdrawn from the transcript of appeal in this case and sent to the Supreme Court of the United States in their original form, and returned to this Court when the writ of error has been disposed of in the Supreme Court of the United States,

It is ordered that the Clerk of this Court is ordered and authorized to withdraw from the transcript of appeal lodged in this Court the original copies of the maps marked "Plaintiff-1," and "D-1," and forward same to the Supreme Court of the United States in the original, the same to be returned to this Court by the Clerk of the Supreme Court of the United States upon the final disposition of said writ of error in said Supreme Court of the United States.

Granted:

(Signed)

F. A. M.,
Chief Justice.

Endorsed: No. 22637. Supreme Court of Louisiana. Godchaux Company, Inc., plaintiff in error, vs. Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, et al., defendants in error. Motion to withdraw original maps. Filed April 17, 1918. (Signed) John A. Klotz, Dep. Clerk.

205 *(Motion to Withdraw Duplicate Copy of Transcript of Appeal.)*

Supreme Court, State of Louisiana.

No. 22637.

GODCHAUX COMPANY, Inc., Plaintiff in Error,

vs.

ALBERT ESTOPINAL, JR., Sheriff of the Parish of St. Bernard, et al.,
Defendants in Error.

On motion of Foster, Milling, Saal & Milling, attorneys for plaintiff in error herein, and on suggesting to the court that they wish to withdraw one of the duplicate copies of the transcript of appeal lodged in this court, in order that same might be used by the Clerk of this Honorable Court in preparing the transcript to be filed in the Honorable, the Supreme Court of the United States on writ of error,

It is ordered that the Godchaux Company, Inc., plaintiff in error herein, is authorized to withdraw from this Court one of the duplicate copies of the transcript of appeal lodged herein, same to be used by the Clerk of this Honorable Court in preparing transcript to be forwarded to the Honorable, the Supreme Court of the United States on the writ of error granted herein.

Granted:

(Signed)

F. A. M.,
Chief Justice.

Endorsed: No. 22637. Supreme Court, State of Louisiana. Godchaux Company, Inc., plaintiff in error, vs. Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, et al., defendants in error. Motion to withdraw duplicate copy of transcript of appeal. Filed April 17, 1918. (Signed) John A. Klotz, Dep. Clerk.

206

(Return to Writ.)

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified

transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 18th day of April, Anno Domini, One thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

Costs.

| | |
|---|---------|
| For copy record of proceedings in 29th Jud. Dist. Court, paid by the Godchaux Co., plaintiff-in-error..... | \$83.75 |
| For filing record in Supreme Court, paid by A. Estopinal, Jr., defendant-in-error | \$25.00 |
| For copy record lodged in Supreme Court, United States, paid by plaintiff-in-error..... | \$31.00 |

Endorsed on cover: File No. 26478. Louisiana Supreme Court. Term No. 432. Godchaux Company, Incorporated, plaintiff in error, vs. Albert Estopinal, Jr., Sheriff of the Parish of St. Bernard, and The Board of Drainage Commissioners of the Bayou Terre aux Boeufs Drainage District. Filed April 30th, 1918. File No. 26478.



NOV 11 1912

JAMES B. SMITH,

CLERK.

IN THE
UNITED STATES SUPREME COURT

OCTOBER TERM, 1912.

No. **101**

GODCHAUX COMPANY, INCORPORATED,

Plaintiff in Error.

vs.

**ALBERT ESTOPINAL, JR., SHERIFF OF THE PARISH
OF ST. BERNARD, AND THE BOARD OF DRAIN-
AGE COMMISSIONERS OF THE BAYOU TERRE
AUX BOEUF'S DRAINAGE DISTRICT,**

Defendant in Error.

In Error to the Supreme Court of the State of Louisiana.

Original Docket of Plaintiff in Error.

WILLIAM GODCHAUX, SAAL & MILLING,

Attorneys for Plaintiff in Error.

E. E. MILLING,

E. C. MILLING,

Cf. Counsel.

November 11, 1912.

E. P. Smith & Co., 515 Natchez St., New Orleans, La.

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IN THE
UNITED STATES SUPREME COURT

OCTOBER TERM, 1919.

No. 432

GODCHAUX COMPANY, INCORPORATED,
Plaintiff in Error,
versus

**ALBERT ESTOPINAL, JR., SHERIFF OF THE PARISH
OF ST. BERNARD, AND THE BOARD OF DRAIN-
AGE COMMISSIONERS OF THE BAYOU TERRE
AUX BOEUFs DRAINAGE DISTRICT,**
Defendant in Error.

In Error to the Supreme Court of the State of Louisiana.

Original Brief of Plaintiff in Error.

SYLLABUS.

1. Boards of Drainage Commissioners created under the laws of Louisiana are not authorized or empowered to levy assessments or acreage taxes against lands lying below tide level, under authority of an election of resident tax payers. Assessment against such lands, for

drainage purposes may only be made upon the petition of land owners owning more than two-thirds in acres of the lands to be affected. In order to drain lands which drain by gravity, acreage taxes may be imposed under authority of a vote of the property tax payers. Article 281, Constitution of Louisiana; Act 317 of 1910; *Williams v. Board of Commissioners*, 130 La. 969; *Marceaux v. East Cameron Drainage District*, 136 La. 913.

2. A local assessment against lands can not be legally made when such lands are not benefited, or when they are taxed for the purpose of doing drainage work which will benefit only other lands. *Myles Salt Co. v. Board of Commissioners*, 239 U. S. 478; *Gast Realty Co. v. Schneider Granite Co.*, 240 U. S. 55; *Williams v. Board of Commissioners*, 130 La. 969.
3. The right of a property owner to contest the validity of a local assessment for drainage purposes on the ground that it was made in direct contravention of the Constitution and laws of the State, and that his property derives no benefit from the proposed improvement, but that same will only benefit lands other than his, is a vested right, and a provision of a State Constitution destroying such right by seeking to deprive the court of jurisdiction to entertain action, takes his property without due process of law, and violates the Fourteenth Amendment to the Federal Constitution. *Cooley's Constitutional Limitations*, (7th Ed.), p. 517; *Osborne v. Nicholson*, 13 Wall 654; *White v. Hart*, 13 Wall 646; *Williams v. Johnson*, 30 Md. 600; *McElvain v. Mudd*, 4 Am. Rep. 106; *Roundtree v. Baker*, 52 Ill. 241.
4. The fact that the Federal Courts may be open to a property owner to contest the validity of an assess-

ment does not constitute "Due Process of Law". The State is required to provide a court to which litigants may resort for the redress of their grievances, and should it fail so to do, it deprives such litigant of due process of law, and violated the Fourteenth Amendment to the Federal Constitution. *Pennoyer v. Neff*, 5 Otto 714; *Walker v. Souvinet*, 3 Otto 90; *Ex Parte Kemmler*, 136 U. S. 436; *Westerfelt v. Gregg*, 12 N. Y. 202.

5. The Constitutional Amendment adopted by the people of Louisiana in 1914, seeking to divest the Court of jurisdiction to entertain a contest involving the validity of drainage bonds issued up to that time by Drainage Commissioners, is not a curative act which could cure the illegality in the imposition of the assessment, the validity of which is herein attacked, as the assessment herein was had in direct contravention of both the Constitution of Louisiana and the United States. *Gast Realty Co. v. Schneider Granite Co.*, 240 U. S. 55; *Myles Salt Co. v. Iberia & St. Mary Drainage District*, 239 U. S. 478; *Wagner v. Leser*, 239 U. S. 207; *Cooley's Constitutional Limitations* (7th Edition), pages 530, 545; *Page & Jones, Taxation by Assessment*, Vol. 2, pages 1650, 1651, 1657; *McCord v. Sullivan*, 85 Minn. 344, 89 N. W. 989.

May It Please Your Honors:

This writ of error is prosecuted from a final decree rendered by the Supreme Court of the State of Louisiana, wherein that Court sustained a plea to the jurisdiction, and dismissed the demand of the plaintiff in error to have adjudged illegal, null and void a sixteen cents acreage

tax or assessment levied upon its lands by the Bayou Terre Aux Boeufs Drainage District of the Parish of St. Bernard, State of Louisiana.

STATEMENT OF THE CASE.

Physical Conditions in Drainage District.

The Bayou Terre Aux Boeufs Drainage District, defendant in error, is a political corporation having its domicile in the Parish of St. Bernard, State of Louisiana, it having been created by the Police Jury of the Parish of St. Bernard on December 15, 1906, under and by virtue of the Drainage Laws of the State of Louisiana, particularly Act 159 of the Acts of the General Assembly for the year 1906. The lands of the district front on the Mississippi and run back to Lake Borgne and into the swamps and marshes. If your Honors will refer to the map filed in evidence deliniating the district (page 41) you will note that running east from the Mississippi River is a small bayou called "Terre Aux Boeufs", which runs directly east for some distance then south and southeast. In this bayou another bayou has its source, and runs in a general direction eastward, to the Gulf. This is known as Bayou Laloutre. Along the Mississippi River and Bayous Terre Aux Boeufs and Laloutre, ridges have been formed by alluvial deposits and immediately adjacent to the banks of the river and the two bayous as well as for some distance back, the lands are high and will drain by gravity. As you go back from the river and the bayous, however, the lands become low and swampy, will not drain naturally and are only sus-

ceptible of cultivation unless an expensive system of dykes and pumps are installed and the lands are reclaimed. As you go east from the river along the Bayous Terre Aux Boeufs and Laloutre, the ridge along their banks become narrower, and gradually disappears, so that in the eastern portion of the district these bayous run through marsh and swamp lands entirely.

These being the physical conditions of the lands of this district, your Honors will be able to see very readily from the map that a very small proportion of the total acreage of the district embraces high lands which drain naturally, and that the larger part of this district is formed of lands of a character known as "marsh", which, in order to be utilized for agricultural purposes, must be leveed and a system of pumps installed.

The plaintiff in error owns a plantation in this district known as "Contraras Plantation", containing a total area of 4201.04 acres. You will find a small map of this plantation in the record (page 10), and your Honors will also note the plantation on the large map of the District referred to above (page 41). You will note that this plantation lies on both sides of the Bayou Terre Aux Boeufs, 537.32 acres being situated on the south side and the remainder on the north side of this Bayou (map, p. 10). Of this total area, only 565.52 acres drain by gravity—328.28 acres on the south and 237.24 acres on the north of Bayou Terre Aux Boeufs—which leaves a total of 3635.52 acres of land which can only be drained by artificial means, i. e., by levees and pumps.

History of District and Imposition of Tax.

The Drainage Commissioners, the governing authority of the Bayou Terre Aux Boeufs District, after its creation, called elections under the laws then in force and assessments were voted and bonds authorized to be issued.

On June 16, 1909, by resolution of the Board, a three cents acreage tax was imposed on all lands of the District and the same was funded into an issue of bonds aggregating \$60,000.00, and at the same time a five mill *ad valorem* tax was imposed, and funded into an issue of \$40,000.00 of negotiable bonds. These bonds and the imposition of the tax were decreed legal by the Supreme Court of Louisiana (Tr., p. 18).

Thereafter, November 20, 1909, the Board called an election, which resulted in the imposition of an additional acreage tax of 6 cents per acre, and the funding of same into an issue of \$165,000.00 negotiable bonds. In this election the five mill tax previously voted was annulled, and the \$40,000.00 of bonds representing the funding of the avails of this five mill tax was cancelled and rescinded. (Tr. p. 19). Then up to 1909, the district had levied and imposed a total acreage tax of 9 cents per acre, and the aggregate bonded indebtedness of \$225,000.00, representing the funding of the avails of these acreage taxes. These taxes having been imposed and the bonds issued prior to the adoption of the present laws governing the drainage of lands in this District, the plaintiff in error has not seen fit to attack their validity, and the legality of such taxes is therefore not at issue in this case.

In 1910, the Legislature revised the drainage laws of the State. It submitted to the people an amendment to Article 281 of the Constitution (which was adopted in November of that year) and also adopted a comprehensive act dealing exhaustively with the question of drainage. This constitutional amendment and the act, recognized the fact that there were two character of lands in this State—those lands which would drain naturally or by gravity, and those which were below tide level, and which had to be leveed and pumped in order to be not only drained, but reclaimed. In order to carry out the drainage and reclamation of the lands in a district, the Drainage Commissioners appointed under the act were authorized to divide their districts into sub-drainage districts, and they were further empowered:

First, when authorized by a vote of taxpayers to issue bonds for general drainage purposes not to exceed 10% of the assessed value of the lands and levy taxes on lands of all character, not to exceed ten mills on the dollar, to retire such bonds in principal and interest;

Second, when authorized by a vote of the taxpayers to levy and impose upon lands which would drain naturally, acreage taxes not to exceed fifty cents per acre per year, and to fund the avails of these acreage taxes into bonds; and

Third, Where lands were of such character that it was necessary that they should be leveed and pumped, in order to be drained and reclaimed, to incur a debt against the lands in an amount sufficient to drain and reclaim them and levy annual acreage taxes against such lands. Such

debts could be incurred and taxes levied, however, only upon petition of the property taxpayers. Not by an election.

The act of the Legislature also authorized existing Districts to take advantage of its provisions by reorganizing thereunder.

The Bayou Terre Aux Boeufs Drainage District was accordingly reorganized under the provisions of Act No. 317 of 1910, on or about December 3, 1910, and the Board proceeded to call elections of taxpayers which resulted in the imposition and levy of a 16 cents acreage tax "on every acre of land within the * * * District", and the funding of the avails thereof into an issue of \$500,000.00 of bonds. (Tr., pp. 20 and 21).

Thus you will note that the low lands of this District were subjected to the payment of this tax by a vote of the taxpayers, when the law contemplated that lands of this character were to be taxed only by a petition of land owners, and then for an amount sufficiently to drain and reclaim them.

This sixteen cent acreage tax was assessed for the years 1912, 1913, and 1914, upon all lands, and was paid by the plaintiff company, it believing that pumps would be installed and the lands would be benefited. In 1915, the company realized that no benefits had or would accrue to its lands from the contemplated drainage system, and it refused to pay the tax upon the lands below tide level, but did offer to pay the tax upon the gravity drained lands. (Mr. Godchaux's testimony, Tr., p. 73.) Upon the sheriff of the Parish of St. Bernard—the tax collector—offering its property for sale, it instituted this action and enjoined the sher-

iff from selling the low lands of the plantation for the payment of the sixteen cents acreage tax.

Pleadings.

In its original petition plaintiff in error alleges itself to be the owner of Contrares Plantation, which plantation consisted of high lands along the Bayou Terre Aux Boeufs gradually sloping back to swamp which was at tide level, and that only the lands lying along Bayou Terre Aux Boeufs were susceptible of gravity drainage. That the sixteen cents acreage tax had been imposed upon all lands at an election, that under the Constitution such tax could be imposed only upon lands susceptible of gravity drainage and that the lands which would not drain naturally could not be charged with this tax by a vote of the property owners. The petition further recited that the property had been advertised for sale by the sheriff and that he would sell it unless enjoined. The prayer was for an injunction prohibiting a sale of that part of the property not susceptible of gravity drainage, and that the assessment of the tax be annulled insofar as that portion of the plantation was concerned. The injunction issued and the sale was stayed. (Tr., pp. 1 to 3.)

In a supplemental and amended petition the plaintiff in error further alleged that its lands had not been and could not be benefitted by the works of gravity drainage which the board was installing. That the lands would not drain naturally, and that the cost of their reclamation would amount to from thirty to forty dollars per acre, that the

lands were of no value unless they were reclaimed, that the tax of 16 cents per acre would not be used in connection with their reclamation, and that to impose such tax would amount to confiscation and be violative of the XIV amendment to the Constitution of the United States, and would be the taking of the plaintiff's property without due process of law. (Tr., pp. 5 and 6.)

Thereafter the plaintiff in error filed another amended petition to which it attached a map, showing that of the total acreage of 4202.04 acres in the plantation, only 565.52 acres were susceptible of gravity drainage. (Tr., pp. 8 to 10.)

The defendant Board answered (Tr., p. 14) denying any illegality insofar as the tax was concerned, also denied that the lands of plaintiff were not benefited, and recited in detail the history of the district and the taxes that had been voted therein.

It further alleged the payment of the taxes by the plaintiff and pleaded estoppel and that in the absence of fraud or palpable abuse, the finding of the Commissioners on the question of benefits could not be inquired into, and that an error of judgment by the Board constituted no ground for the annulling of the tax.

In conclusion the defendant Board specifically urged the following plea, (Tr., p. 23) :

"That this Court is without jurisdiction *ratione materiae* to entertain this suit, because an attack on said special acreage taxes or forced contributions levied by the property owners and Board of Drainage Commissioners of the Bayou Terre Aux Boeufs

Drainage District is an attack on said bonds, and the jurisdiction to entertain any such contest, where bonds had been issued, under Article 281 of the Constitution, where such bonds had not been declared invalid by a judgment of a court of last resort in the State of Louisiana, and more than sixty days had elapsed since the promulgation of the proceedings evidencing the issuing of said bonds, was withdrawn from all the courts of the State of Louisiana, and such bonds declared to be valid and existing bonds or obligations by the amendment to Article 281 of the Constitution adopted in 1914. Therefore, for this Court or any other Court of the State of Louisiana to try this case and annul said special acreage taxes or forced contributions levied by the Bayou Terre Aux Boeufs Drainage District would destroy said bond issues and deprive the holders of said bonds of their property without due process of law, in violation of the Fourteenth Amendment of the Federal Constitution."

The defendant in error also filed another answer in which the allegations as to the history of the Drainage District, the denial of the facts alleged in plaintiff's petition, the authority of the Drainage Commissioners and the effect of their decision in the absence of fraud and palpable abuse were similar to the allegations made in the original answer. It also pleaded want of jurisdiction in the Court, based upon the amendment to Article 281 of the Constitution adopted in 1914, and in addition alleged that in the event Acts 317 of 1910 and 219 of 1912, the drainage laws of the State, deprived the Board of Commissioners of the right to levy the 16 cents acreage tax, then the said acts impaired the vested rights of the purchasers of the bonds,

in derogation of Articles 2 and 166 of the Constitution of the State of Louisiana and the 14th Amendment to the Constitution of the United States.

The case was tried in the District Court upon the issues as made, the trial being had upon the merits. The proceedings of the Drainage Board leading up to the calling and holding of the election at which 16 cents acreage tax and the \$500,000.00 bonds were sold, and the proceedings promulgated the election, imposing said tax and authorizing the issuance of the bonds were filed in evidence by the defendant, (Tr., pp. 41 to 50). The oral testimony of Mr. Charles Godchaux, who is the President of the Godchaux Company, Inc., plaintiff in error, and of Mr. H. C. Smith, a civil engineer who had formerly been connected with the Drainage District, was taken on behalf of the plaintiff in error, and the oral testimony of Mr. A. G. Mundinger, the engineer of the Drainage Board, was had on behalf of the defendant in error, (See Mr. Godchaux's testimony, Tr., pp. 71 to 73; Mr. Smith's testimony, pp. 73 to 79; Mr. Mundinger's testimony, pp. 80 to 97).

Facts Adduced.

The testimony of these witnesses established the fact that a large proportion of the Drainage District was composed of marsh and swamp lands and that the only high lands in the district were those bordering on the Mississippi River, Bayou Terre aux Boeufs and Bayou Laloutre. Mr. Mundinger also offered in connection with his evidence a map of the district, (Tr., p. 41), which map showed the

work that had been completed and that which it was contemplated would be done in the drainage district. You will note by an examination of this map that the canals which had been excavated up to that time, are shown in red lines and that the canals which the Board hoped to complete are shown in yellow lines. You will also note from this map that the Bayou Terre aux Boeufs and the Bayou Laloultre had been dredged, and that this constituted the completed work, with the exception of a certain canal dredged along Lake Borgne on the northern line of the district and a certain other canal in the Eastern portion of the district running along Bayou Mandeville, Lake Delery, and the 40 arpent line behind Poydras, Sebastopol, Creedmore, Magnolia and Kenilworth Plantations. It will also appear from this map that the only canal cut through the Contraras Plantation was the one constructed by the dredging of the Bayou Terre Aux Boeufs, through the ridge lands of said plantation.

Mr. Mundinger frankly admits that the marsh lands on Contraras Plantation would not be drained by the canal system constructed, that the proposed drainage system if completed, would not benefit these lands, and that the only means by which they could be benefited would be to do additional work not contemplated by the Board; that is, levee the lands and establish pumps, which would mean the expenditure of from \$30.00 to \$40.00 per acre. (Tr., p. 93-94.)

We particularly call your Honors' attention to the fact that portions of the plantation lying between the 40 arpent line on the north of Bayou Terre Aux Boeufs and the nor-

thern boundary of the district will not be included within any canals, even if the system were completed, which can not be done because of the lack of funds. This is true for it was admitted that only \$40,000.00 of bonds remain in the treasury of the district and that the funds on hand are not sufficient to install a complete drainage system of levees and pumps (Tr., p. 99.)

Judgment and Decree of Louisiana Court.

The District Court rendered judgment in favor of the defendant, deciding the case upon the merits, (See Tr., pp. 53 to 65). On appeal to the Supreme Court of the State, that Court decided that it had no jurisdiction in the premises, basing its decision upon the last clause of paragraph 3 of Article 281 of the Constitution. The language of the decision on this question being as follows (Tr., pp. 129-131):

“Against this demand, various defenses were made, only one of which, we propose to discuss, as we believe the fundamental law of the State places it beyond the power of the Court to grant the relief prayed for by plaintiff.

“The second and last clause of paragraph 3 of Article 281 of the Constitution, provides that ‘all bonds heretofore issued under and by virtue of this Article 281 of the Constitution by the governing authority of any subdivision,’ (which is elsewhere defined as including a drainage district), ‘which have heretofore not been declared invalid by a judgment of a court of last resort in the State of Lou-

isiana, and more than sixty (60) days have elapsed since the promulgation of the proceedings evidencing the issuing of said bonds, are hereby recognized and declared to be valid and existing bonds and obligations of the district or subdivision issuing the same, and no court shall have jurisdiction to entertain any contest wherein their validity or constitutionality is questioned.

"The foregoing amendment to Article 281 of the Constitution, was adopted in November, 1914, and had been in force more than one year when on May 29th, 1916, the present suit was filed.

"It therefore follows that this Court is without jurisdiction, unless as contended by plaintiff, this is not a suit contesting the validity of the bonds, and if it—such a suit, unless as further contended by plaintiff, said bonds were not issued under and by virtue of article 281 of the Constitution.

"We do not believe the either of these last two contentions of plaintiff are maintainable.

"As to the first, it is shown by the record, that if plaintiff's lands and all other lands of the same character, situated in the Bayou Terre aux Boeufs Drainage District, are declared not subject to the payment of the sixteen cents acreage tax, then the bonds, into which said tax was funded, and of which Four Hundred and Sixty Thousand Dollars in amount, have been issued and sold, will for the lack of funds, be dishonored and there will be a default in the payment of interest thereon. It is then apparent that if the fund which consists of the very same taxes that plaintiff is attempting to avoid, and out of which only, the bonds may be paid, is destroyed, the bonds

themselves are bound to be thereby affected and their validity impaired. As appropriately said by counsel for defendants, if the fund, the only foundation upon which the bonds rest, is taken away, the bonds themselves, the superstructures, are bound to fall: *Sublato fundamento, cadet opus*. Commenting upon the relations between bonds and the taxes assessed for their payment, the United States Supreme Court, in the case of *Louisiana v. Pilsbury*, 105 U. S. 288, says: "The annual tax was the security offered to the creditors; and it could not be afterwards severed from the contract without violating its stipulations, any more than a mortgage executed as security for a note given for a loan could be subsequently repudiated as forming no part of the transaction."

"It is true that no bondholders, as such, is party to this proceeding, but that fact can be of little comfort to plaintiff as it would only be additional ground to dismiss its suit for want of proper parties.

"Having then reached the conclusion that plaintiff's demand, if granted, would impair the validity of the bonds, into which the tax in contestation was funded, the next enquiry is whether the said bonds were issued under and by virtue of Article 281 of the Constitution. The affirmative of that proposition seems equally clear to us.

"Plaintiff takes the position that its lands, being of such a character, that they have to be leveed and pumped in order to be drained and reclaimed, could only be subjected to an acreage tax upon the petition of no less than a majority in acreage of the property tax payers, resident and non-resident, in the

area to be affected, as provided in paragraph 4 of article 281 of the Constitution, as that article stood after its amendment in 1910. It further claims that the sixteen cents acreage tax not having been levied in accordance with the provisions of said paragraph, the Board of Commissioners was without authority to assess the same and therefore that the bonds into which said tax was funded are not such bonds as are protected from being assailed in the Courts of this State, under the quoted amendment to Article 281, adopted in November, 1914. In other words, we understand plaintiff's contention to be that the forms prescribed by Article 281 not having been observed by the defendant drainage district, the said bonds were therefore not issued under and by virtue of Article 281 of the Constitution and are subject to attack, and not protected by the prescription amendment to Article 281 adopted in 1914.

"Plaintiff, in attempting to evade the effect of the curative prescription, provided for in the last clause of Article 281, as already quoted herein, asks us to do the very thing which we are therein inhibited from doing; it asks us to enquire into the validity of the tax and therefore into the validity of the bonds in order to ascertain whether the bonds were issued under and by virtue of Article 281. It is a sufficient answer to this contention on its part, to say that the bonds purport on their face to have been issued under and by virtue of Article 281 of the Constitution; that if there was any irregularity or informality in their issuance, it is cured by the quoted constitutional prescription; and that if on the other hand, it were necessary to show that all the forms and conditions of the said Article 281 have been complied with in the issuance of said bonds, be-

fore the prescriptive provision could be applied, then that provision would rank superfluity and become meaningless.

"We are therefore of the opinion that plaintiff's suit attacks and questions the validity of the Bayou Terre aux Boeufs Drainage District bonds, issued in the sum of Five Hundred Thousand Dollars, by the Commissioners of that District by authority of an election held in said District on August 28, 1912; that said bonds were issued under and by virtue of Article 281 of the Constitution and that therefore the Courts of this State, whose sole source of power and authority is derived from the Constitution, are without jurisdiction to entertain said suit.

"The conclusions which we have thus reached, are directly in conflict with our ruling in the case of *Shaw v. Board of Commissioners*, 138 L. 923, where we held that an attack upon a pledge did not of necessity involve an attack upon the bond which it secures. That ruling may be absolutely correct in some instances but it is overruled insofar as it affects the issues in the present case."

An application for rehearing was applied for, (Tr., p. 131) one of the grounds of error assigned being that the constitutional amendment seeking to divest the court of jurisdiction was itself unconstitutional in that it violated the XIV amendment to the Constitution of the United States. The application for rehearing was refused, whereupon a writ of error, with *supersedeas*, was granted from this Court to the Supreme Court of the State of Louisiana.

Assignment of Error.

The error assigned is that the Supreme Court of Louisiana in its opinion and decree in the cause gave effect to that part of Article 281 of the Constitution of the State of Louisiana as amended in 1914, which attempt to divest the courts of the State of jurisdiction to entertain any contest wherein was raised the constitutionality or legality of any bond issue and that, (Tr., p. 142) :

"The Supreme Court of the State of Louisiana in giving effect to the above mentioned amendment to Article 281 of the Constitution of the State of Louisiana, has given effect to a state law which is violative of the Constitution of the United States of America, in that the said above quoted amendment to the Constitution of the State of Louisiana, by depriving the court of jurisdiction in cases therein mentioned, has barred a vested right of action (the property and right of your relator), to contest the validity of the acreage tax or forced contribution which relator claims was illegally levied and assessed upon its lands, thereby destroying the right vested in relator to resort to the Courts for the purpose of contesting the validity of said tax.

"That for this reason said amendment to Article 281 of the Constitution of the State of Louisiana, above quoted, and the opinion and decree of the Honorable, the Supreme Court of the State of Louisiana, giving effect to said amendment, divest your relator of its vested right of action, which vested right of action exists in your relator and is recognized by the laws of the State of Louisiana and the United States of America, and deprives it of its property without

due process of law, and denies to it the equal protection of the law. That the said constitutional amendment, as well as the opinion and decree of the Honorable, the Supreme Court of the State of Louisiana, giving effect to said amendment, are violative of the Fifth and Fourteenth Amendments to the Constitution of the United States of America."

ARGUMENT.

In the argument in the State Court, counsel for the defendant, in reply to the contention that the amendment to Article 281 of the Constitution, deprived the plaintiff in error of its property without due process of law, advanced two propositions:

First: That even if the plaintiff had a cause of action, it had not been deprived of its property without due process of law for the reason that the Federal Courts were open to it, and as it could have instituted the suit in the Federal Court, it had not been entirely deprived of a forum and was not deprived of the process of law;

Second: Counsel urged that the constitutional amendment was a curative statute. That originally the Legislature of the State, and the people, through the Constitution could have organized the Bayou Terre aux Boeufs Drainage District and have imposed assessments against the lands therein just as was done in this instance, and that if this authority was vested in them originally, they would by a curative statute do that which they were empowered to do in the first instance; that as a consequence, the constitutional amendment did not destroy a vested right as the plaintiff enjoyed no vested right to institute the action.

In arguing the questions presented upon this writ of error, we will argue as the first proposition that the plaintiff under the laws of Louisiana and the United States was vested with a cause of action to contest the validity of this assessment; that this cause of action was a vested right, recognized by the Constitution and laws of the State of Louisiana and of the United States; that the constitutional amendment seeking to divest the courts of jurisdiction of the cause attempted to destroy this vested right, and that the said amendment and the decision of the court giving effect thereto, had the effect of depriving plaintiff of its vested right, contrary to the Fourteenth Amendment to the Federal Constitution.

We will then argue the two propositions advanced by the defendant, in the order above stated.

I.

Your Honors will note from the above statement of this case that the plaintiff in error attacks the validity of an acreage tax levied and imposed by the defendant board on the two grounds, viz.:

1st. That the taxes were imposed by an election when the Constitution and laws prohibited the imposition of taxes upon the character of land belonging to plaintiff, that is lands which have to be leveed and pumped, except by a petition of the property tax payers; and

2nd. That in any event, no benefits can or will accrue to the plaintiff's lands from the contemplated drainage system.

While evidence on the merits of the case was taken and adduced and the facts are in the record, the Supreme Court of Louisiana decided only one question—That this was an attack upon the bond issue of the Bayou Terre aux Boeufs Drainage District, and under the provisions of the amendment to the Constitution of the State of Louisiana that the Court was deprived of jurisdiction and therefore, that it could entertain no contest wherein the validity of the assessment was questioned. Before proceeding further with the argument we deem it well to quote here the above mentioned clause of the Constitution. It reads:

“All bonds heretofore issued under and by virtue of this Article 281 of the Constitution by the governing authority of any subdivision, which have heretofore not been declared invalid by a judgment of a Court of last resort in the State of Louisiana and more than sixty (60) days have elapsed since the promulgation of the proceedings evidencing the issuing of said bonds, are hereby recognized and declared to be valid and existing bonds and obligations of the district or subdivision issuing the same, and no court shall have jurisdiction to entertain any contest wherein their validity or constitutionality is questioned.”

The plaintiff in error in the original hearing before the Supreme Court, and in its application for rehearing, attacked the legality of this section, contending that the right to institute this action was vested in it under the laws of the State of Louisiana and of the United States and that the act of the People of Louisiana in inserting in the organic law of the State a provision which deprived

it of this vested right of action, i. e., to institute suit to have the tax declared illegal, had the effect of destroying that action without giving it an opportunity to enjoy its day in court, which was tantamount to taking its property without due process of law and deprived it of the equal protection of the law and that therefore the amendment violated the 14th Amendment to the Constitution of the United States. The Court did not pass specifically upon that question, but inferentially did so by holding that it was deprived of jurisdiction. In this Court plaintiff has assigned as error, the ruling of the State Court in giving effect to this unconstitutional provision of the Louisiana Constitution.

Has Plaintiff in Error a Cause of Action?

We take it that plaintiff in error must first establish the fact that it was vested with a cause of action, and must demonstrate to the Court that the laws of Louisiana and of the United States recognized in it a right of action against the Drainage Board to test the validity of the levy and imposition of this assessment.

We submit that under the laws of both Louisiana and the United States, the plaintiff was vested with a right to institute this action, and that the decisions of this Court and of the Court of Louisiana, established that principle. Consider the first ground of attack. Plaintiff says the tax was imposed by a vote of the property taxpayers when it could be imposed, if at all, only by a petition of such tax payers. That this contention is sound is settled by verbiage of our

Constitution and the decisions of the Court of Louisiana.

We will first quote from Article 281 of the Constitution as amended in 1910, and then refer to the decisions. Paragraphs 3 and 4 read as follows, (See Acts of 1910, p. 333) :

"Nothing herein * * drainage districts * * established under the laws of this State shall, in addition to the powers hereinabove granted, have the further power and authority to levy and assess annual contributions or acreage taxes on all lands situated in such districts, for the purpose of providing and maintaining drainage systems, not exceeding fifty (50) cents per acre for a period not exceeding forty (40) years, when authorized to do so by a majority in number and amount of the property taxpayers of said district, qualified to vote under the Constitution and laws of this State, who vote at an election held for that purpose and in the manner provided in the first part of this article, and said drainage districts, through the Boards of Commissioners thereof, when authorized as hereinabove provided, may incur debt and issue negotiable bonds therefor, payable in principal and interest, the aggregate amount to be raised by said annual contributions or acreage taxes during the period for which the same are levied. No such drainage bonds shall be issued for any other purpose than that for which said contributions or acreage taxes were voted or run for a longer period than forty (40) years from their date or bear a greater rate of interest than five (5) per cent per annum or be sold for less than par.

"When the character of any land is such that it must be levied and pumped in order to be drained

and reclaimed, the Board of Commissioners of the District in which the land is situated, shall, upon the petition of not less than a majority in acreage of the property taxpayers, resident and non-resident, in the area to be affected, ascertain the cost of drainage and reclaiming said land and incur debt against said land for an amount sufficient to drain and reclaim it, and issue for said debt negotiable bonds running not longer than forty (40) years from their date and bearing interest at a rate not exceeding five (5) per centum per annum, payable annually or semi-annually, which bonds shall not be sold for less than par; and said Board of Drainage Commissioners shall levy annually upon said land forced contributions or acreage taxes in an amount sufficient to maintain the drainage of said land and to pay the interest, annually, or semi-annually, and the principal falling due each year, or such amount as may be required for any sinking fund provided for the payment of said bonds at maturity; provided, that such forced contribution or acreage taxes, for all purposes, shall never exceed Three Dollars and Fifty Cents (\$3.50) per acre per annum."

Your Honors will note that the last quoted paragraph refers specifically to lands which must be pumped. The courts have held, that taxes could be imposed under this article only by petition of land owners.

The first decision on this question was that of *Williams v. Board of Commissioners*, 130 La. 969. The facts of that case were very similar to the facts of this case. There an acreage tax was imposed by an election upon a large tract of marsh land, the intention that the funds derived from the tax were to be used to drain certain lands not belonging

to plaintiff. It was contended that no taxes could be levied upon the marsh lands except by petition. This contention was upheld, the Court saying:

"The constitutional amendment of 1910 contemplates that the question of drainage where pumps and levees are required should be determined by a majority of the property tax payers as above stated. This organic law was in force when the second election on the question of a bond issue was held in the Bayou Sale Drainage District.

"All laws in conflict with the provisions of the constitutional amendment of 1910 were repealed and abrogated from the date of its adoption and promulgation. It follows that, *quoad* lands requiring pumps and levees for drainage, prior laws authorizing the imposition of taxes and local assessments were repealed."

A later decision announcing this same principle is that of *Marceaux v. East Cameron Drainage District No. 3*, 136 La. 913, decided after the amendment of 1914 to art. 281 had been adopted. In that case, an election was called in the Drainage District and a 12-ct. per acre acreage tax was imposed upon the lands lying therein. Plaintiff alleged that its lands were low lands which could not be drained by gravity and that there was no authority in the taxpayers by an election to impose an acreage tax upon such character of lands, as these lands were not susceptible of gravity drainage. The Court held the tax to be illegal, saying:

"Paragraph 3 of Article 281 embraces the drainage system which may be successfully used in the district of the defendant; and it follows that the

drainage authorities therein may not levy forced contributions upon the land of that district, except on petition of the property holders, as is provided for in said paragraph 3; and, as no such petition was made in the defendant district, the tax levied and sought to be collected cannot be enforced. The ordinance levying it is null and void."

Under these authorities we submit that the first ground urged, is a legal ground of attack and that on that ground if no other, the plaintiff was vested with a cause of action to contest the validity of this tax.

The second ground of illegality urged, that the plaintiff's lands can and will derive no benefit from the drainage projects and that to tax those lands with the 16 cents acreage tax would be confiscatory, constitutes a cause of action, the validity of which was recognized by this Honorable Court in the case of *Myles Salt Company v. The Board of Commissioners of Iberia & St. Mary Drainage District*, 239 U. S. 478, and *Gast Realty Co. v. Schneider Granite Co.* 240 U. S. 55, and by the Supreme Court of Louisiana in *Williams v. Bd. of Commissioners*, 130 La. 969. All of these decisions announce the rule to be that one man's property can not be taxed for the benefit of another and that an attempt so to do is an arbitrary and illegal exercise of the taxing power.

Under the above authorities we submit that plaintiff in error was vested with a cause of action to test the question of the validity of this bond issue, and that under the allegations of the petition and the facts of the case, two grounds of illegality are established, either or both of which are recognized in law to be fatal to the validity of the tax.

The next question to determine is:

**Did the Constitutional Amendment Seek To Destroy
Plaintiff's Right of Action**

We respectfully request the Court to note the verbiage of the amendment. It declares:

"All bonds * * * issued under * * *
Article 281 of the Constitution * * * not *
° * declared invalid by a judgment of Court *
* * and more than sixty days have elapsed since
the proceedings evidencing the issuance of said bonds
are hereby recognized and declared to be valid and
existing bonds and obligations of the District * *
* and no court shall have jurisdiction"

to entertain a contest questioning their validity. You will note that this statute is not a statute of limitations, but is a statute of repose, as it declares all bonds to be legal and valid obligations of the district, regardless of whether they were originally legal, and deprives the property owners of the right to resort to the courts to test the validity of such bonds.

The bonds here under consideration and the tax levied to secure them were issued and levied sometime prior to the adoption of the amendment to the Constitution. Therefore, the constitutional inhibition against a court entertaining jurisdiction of a contest questioning the validity of such tax applied the moment the constitutional amendment was adopted and if this amendment was a legal and valid exercise of power by the people of the State, then no court

would be permitted to entertain jurisdiction of an action questioning the validity of the tax. This being the case, we submit as the next proposition, that the plaintiff's

Right of Action was a Vested Property Right,
and that the constitutional amendment seeking to destroy that right as well as the action of the court in giving effect to the amendment constituted the taking of plaintiff's property without due process of law and deprived it of the equal protection of the law.

We perhaps will be needlessly taking up the time of the Court in citing to your Honors authority on the proposition that a right of action is property in the same sense that tangible things are property. The defendant in error, however, seemed to have taken exception to this in the argument in the Supreme Court of Louisiana, and we therefore pray the Court's indulgence and ask permission to quote from Judge Cooley's work on *Constitutional Limitations*, 7th Edition, page 517, where he lays down the rule that,

"A vested right of action is property in the same sense in which tangible things are property, and is equally protected against arbitrary interference. Whether it springs from contract, or from the principles of the common law, it is not competent for the Legislature to take it away. And every man is entitled to a certain remedy in the law for all wrongs against his person or his property, and cannot be compelled to buy justice, or to submit to conditions not imposed upon his fellows as a means of obtaining it. Nor can a party by his misconduct so forfeit a right that it may be taken from him without judi-

cial proceedings in which the forfeiture shall be declared in due form. Forfeitures of rights and property cannot be adjudged by legislative act, and confiscations without a judicial hearing after due notice would be void as not being due process of law."

No further authority is necessary to support the proposition that this cause of action vested in the plaintiff was as much his property as was the Contrares Plantation itself.

We then submit as a further proposition that the constitutional amendment adopted by the people of Louisiana by taking away from the Courts the right to entertain jurisdiction of this cause of action, destroyed it, and thereby divested plaintiff of its property without due process of law.

Statutes and constitutional provisions of the character in question here have been held to be invalid by this Honorable Court and by the various State Courts of last resort.

The case of *Osborne v. Nicholson*, 13 Wallace, 654 (20 Law Ed., 689), we consider very much in point. There a clause of the Constitution of the State of Arkansas, adopted in 1868, was in question. This provision declared null all contracts for the purchase or sale of slaves, and that:

"No Court of the State should take cognizance of any suit founded upon such a contract, and that nothing shall ever be collected upon any judgment or decree which had been or should thereafter be rendered upon any such contract or obligation."
Page 656.

The action was instituted upon a contract of the sale of a slave, which had been entered into in March, 1861. The

Court held that the contract was a binding and valid contract in the State of Arkansas when it was confected and could have been enforced at that time; that the framers of the Constitution could not thereafter divest the plaintiff of this vested right, or impair the obligation of the contract, by depriving the Courts of jurisdiction, and that the constitutional provision violated the Constitution of the United States.

A similar case to the above is that of *White v. Hart*, 13 Wall. 646, 20 L. Ed. 685, where action was instituted upon a promissory note executed to represent a portion of the purchase price of a slave, the note having been executed in 1859. Suit was instituted on the note in the State of Georgia. It was contended that an article of the Constitution of that State adopted in the year 1868, which provided that

"No court or officers shall have, nor shall the General Assembly give, jurisdiction to try or give judgment on or enforce any debt the consideration of which was a slave or the hire thereof,"

divested the Court of jurisdiction.

The Court said:

"When the note was executed and until the Constitution of 1868 was adopted, the Courts of the State had unquestionable jurisdiction to entertain a suit brought to enforce its collection, and if that jurisdiction ceased, it was by reason of the provision of the Constitution of the State here under consideration." (p. 653.)

The Court, after considering the matter, reached the conclusion that the constitutional provision was invalid, holding:

"Without the remedy, the contract may, indeed, in the sense of the law, be said not to exist, and its obligation to fall within the class of those moral and social duties which depend for their fulfilment wholly upon the will of the individual. The ideas of validity and remedy are inseparable, and both are parts of the obligation which is guaranteed by the Constitution against invasion. The obligation of a contract 'is the law which binds the parties to perform their agreement.' It was said further that the State may modify the remedy, but not so as to impair substantial rights; and that whenever this result 'is produced, the act is within the prohibition of the Constitution, and to that extent void.' When the contract here in question was entered into, ample remedies existed. All were taken away by the proviso in the new Constitution. Not a vestige was left. Every means of enforcement was denied, and this denial if valid involved the annihilation of the contract. But it is not valid. The proviso which seeks to work this result, is, so far as all pre-existing contracts are concerned, itself a nullity. It is to them as ineffectual as if it had no existence. Upon the question as thus presented, several eminent State Courts have expressed the same views. *Coley, Const. Lim.*, 289."

Another decision in point is that of *Williams v. Johnson*, 30 Md. 600 (96 Am. Dec. 613). Here an action of trover to recover the value of a negro slave was instituted. At the time of the institution of the suit slavery existed, and

the question was whether the Maryland Constitution of 1864, which abolished slavery, operated as a bar to the plaintiff's action. It was contended that the abolition of slavery included the abolition of the right to enforce a contract for the sale of a slave, and further that the right of action was not a vested right but a remedy, and therefore the Constitution could abolish the right. The Court held the contention to be unsound, using the following language:

"But it insisted that the right of action, being merely the remedy, is not a vested right within the meaning of the rule. It is true, a distinction has been recognized between the obligation of a contract and the remedy for its enforcement. It has been repeatedly held that the remedy may be modified—one form of action substituted for another—the mode and manner of procedure varied, but a remedy in some shape or form must be left to the person who has suffered in his person or property. All remedy cannot be taken away; for of what value would be the right of property without process of law to protect it? Accordingly, we find it laid down by a late writer on Constitutional Limitations 'that a vested right of action is property in the same sense in which tangible things are property, and is equally protected against arbitrary interference.' *Cooley's Constitutional Limitations*, 362."

Alabama Courts in the case of *McElvain v. Mudd*, reported in the 4th Am. Rep., p. 106, has held a statute seeking to declare illegal, obligations incurred for the sale of slaves while the institution of slavery was legal, to be violative of the Constitution of the United States.

Also see *Roundtree v. Baker*, 52 Ill. 241, 4 Am. Rep. 597.

In the above cases the obligation of contracts were impaired by State legislation, and such action was held to be violative of the Federal Constitution. In this case property is being destroyed by a provision of the Constitution of Louisiana. Then the constitutional provision violates the Federal organic law.

We respectfully submit to your Honorable Court that the amendment to Article 281 of the Constitution of Louisiana whereby the courts of that state were divested of jurisdiction to entertain an action to test the validity of the tax herein enjoined, had the effect of destroying, by taking away the remedy, a vested right of action in the plaintiff in error, and the action of the Supreme Court of Louisiana in giving effect to such constitutional provision, deprived plaintiff of this vested right of action and therefore divested it of its property without due process of law, and denied to it the equal protection of the law, all in direct contravention of the Fourteenth Amendment to the Constitution of the United States.

Before considering the remaining two questions, we desire to particularly call the Court's attention to the fact that the Supreme Court of Louisiana has recently rendered a decision, June 30, 1919, in another appeal lodged there by the plaintiff in error here, wherein was enjoined the Bayou Terre aux Boeufs tax assessed for the year 1915. A plea to the jurisdiction was filed, and sustained, and upon appeal to the Supreme Court, that Court reversed the judgment of the District Court and held that it did have jurisdiction of the cause, holding

that the amendment to the Article 281 of the Constitution of the State of Louisiana adopted in 1914 which it in this case held had divested it of jurisdiction was violative of the Federal Constitution. An application for rehearing has been filed and at the present time, this application has not been disposed of by the Supreme Court of Louisiana. We attach as an appendix marked "A", to this brief, a copy of the decision of the Supreme Court of Louisiana, rendered in the last mentioned case, "*Godchaux Company, Inc., v. Albert Estopinal, Jr., Sheriff, et als.*," No. 23,026 of the docket of that court in order that your Honors may have before you, a copy of the decision.

II.

The defendant in error in the Supreme Court of Louisiana took the position that the plaintiff herein may not urge that it has been deprived of its right of action without due process of law, because of the fact that it may, as defendant contends, resort to the Federal Courts, and that therefore it has not been deprived of its day in court. In answering this contention we will not burden the court with a discussion of the question of whether the amount involved is sufficient to vest the Federal Court with jurisdiction of the subject matter. Though we hardly think the Federal Courts have jurisdiction, we will base our reply to that argument upon the broad ground that due process of law means that a litigant shall have the right to resort to the Courts of his State in order that he may exercise the rights granted him and guaranteed by the United States Constitution, and if a statute or a consti-

tutional provision of a state attempt to destroy this right by depriving him of the remedy granted him under the law of the land to resort to the State Courts, this is a deprivation of the due process of law guaranteed him by the Constitution of the United States.

In approaching this argument we ask the Court to remember that the Fourteenth Amendment declares that:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

You will note, your Honors, that this prohibition is directed towards the State. No State may deprive a person of property without due process of law. Then what does "due process of law" presuppose? Clearly that there shall be a tribunal in which the rights guaranteed by the Federal Constitution may be exercised. What kind of a tribunal? Created by what agency? The State, of course, for the State is prohibited from depriving a person of this right, and if the State may deprive its courts of jurisdiction, and reply to the Federal Government, "You have established a tribunal to which this litigant may resort, let him go there", the guarantee amounts to nothing, for the State has not given the due process of law which is required under the Constitution, but the Federal Government has furnished the forum for the redress of the wrong done the individual. Consequently the State has deprived such person of due process of law, which it is required to

give under the Constitution, because there is no State Court to which he may resort, and a right without a remedy—a forum in which to assert it—is valueless. Therefore plaintiff may insist, as one of the requisites of the due process of law guaranteed him, the right to resort to the State Courts. This is clearly the meaning of the term, “Due Process of Law.”

Take the definition as annunciated by this Court in the case of *Pennoyer v. Neff*, 5 Otto 714, 24 Law Ed. 565, where the Court defined the term, saying, (page 572 of the Law Edition) :

“Since the adoption of the 14th amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a Court of justice to determine the personal rights and obligations of parties over whom that Court has no jurisdiction, do not constitute due process of law. Whatever difficulty may be experienced in giving to those terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They then mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution, that is, by the law of its creation, to pass upon the subject matter of the suit; and if that involves merely a determination of the personal liability of the defendant, he must be

brought within its jurisdiction by service of process within the State, or his voluntary appearance."

Again, we find that the Court also defines the meaning of the term in the case of *Walker v. Souvinet*, 3 Otto 90, 23 Law Ed. 678. Here the Court said (page 93 Sup. Ct. Rep., page 679, Law Ed.) :

"This requirement of the Constitution is met, if the trial is had according to the settled course of judicial proceedings. *Murray v. Hoboken L. & I. Co.*, 18 How. 820, 15 L. Ed. 376. Due process of law is process due according to the law of the land. This process in the State is regulated by the law of the State. Our power over that law is only to determine whether it is in conflict with the supreme law of the land; that is to say, with the Constitution and law of the United States made in pursuance thereof, or with any treaty made under the authority of the United States."

In the case of *Ex parte Kemmler*, 136 U. S. 436, 34 Law Ed. 519, the term is again defined. The Court holding (pages 448 and 449, Sup. Ct. Rep., page 524 Law. Ed.) :

"As due process of law in the Fifth Amendment referred to that law of the land which derives its authority from the legislative powers conferred on Congress by the Constitution of the United States, exercised within the limits therein prescribed, and interpreted according to the principles of the common law, so, in the Fourteenth Amendment, the same words refer to that law of the land in each State, which derives its authority from the inherent and reserved powers of the State, exerted within the limits of those fundamental principles of liberty and

justice which lie at the base of all our civil and political institutions. Undoubtedly the amendment forbids any arbitrary deprivation of life, liberty and property and secures equal protection to all under like circumstances in the enjoyment of their rights."

The New York Courts have also defined the term in the case of *Westervelt v. Gregg*, 12 N. Y. 202, 62 Am. Dec. page 160:

"The Constitution of this State declares that 'no person shall be deprived of life, liberty or property without due process of law;' Const., Art. 1, Sec. 6. Due process of law undoubtedly means in the due course of legal proceedings, according to those rules and forms which have been established for the protection of private rights. Such an act as the Legislature may, in the controlled exercise of its power, think fit to pass is in no sense the process of law designated by the Constitution. This construction has heretofore been adopted: *Taylor v. Porter*, 4 Hill 140; and it is so obviously sound that the mere statement of it is sufficient. Its correctness cannot be made more apparent by argument or illustration."

Under the above definitions what is due process of law? It can be stated no plainer than as stated by the Court in *Pennoyer v. Neff*. It means "a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution, that is, by the law of its creation, to pass upon the subject-matter of the suit."

If the term means the course of legal proceedings according to the manner and form of the law of the land, and this contemplates a tribunal created by the law of the State "and competent by its Constitution", then we say that in order that there may be due process of law it is necessary that there should be a State Court to which the litigant may resort for the purpose of having his rights adjudged, and unless there is such a Court then there can be no due process of law. In the instant case, there is a Court, but the Constitution creating that Court, has declared that it shall not hear this case. This provision of the Constitution has destroyed or attempted to destroy the competent tribunal for the enforcement of the rights guaranteed by the Constitution of the United States. Then, if the right to resort to the Courts of the State, the "tribunal competent by its Constitution" to pass upon this question, is a part of the due process of law guaranteed by the Constitution of the United States, the fact that a Federal Court might also have jurisdiction, certainly can have no effect upon the constitutional right of a litigant to insist that the State Courts shall at all times remain open for the purpose of enabling him to enforce his rights.

We submit that the argument that plaintiff's forum is the Federal Court is without merit, and that your Honorable Court should so hold.

III.

The defendant in error in the State Court contended further that the constitutional provision herein attacked

was in the nature of a curative act, and that if the Legislature of Louisiana and the people of the State could have levied this tax originally without regard to benefits, and without violating the Fourteenth Amendment, that they could ratify the act of this Drainage Board at any future time. The contention was made by the Board that under the rule recognized by this Court, a State Legislature may at any time create a drainage district, levy taxes upon all lands therein and prohibit the courts of the State from assuming jurisdiction a contest involving their validity, all without violating the Fourteenth Amendment to the Federal Constitution. The authorities relied upon to support this proposition are the decisions of this Court rendered in the cases of *Spencer v. Merchant*, 125 U. S. 355, and *New Orleans v. Clark*, 95 U. S. 653, 654. In these cases this Court announced the doctrine to be (*Spencer v. Merchant*) that:

"When the determination of the lands to be benefited is intrusted to commissioners, the owners may be entitled to notice and hearing upon the question whether their lands are benefited and how much. But the Legislature has the power to determine by the statute imposing the tax, what lands, which might be benefited by the improvement, are in fact benefited; and if it does so the conclusion is conclusive upon the owners and the courts, and the owners have no right to be heard upon the question whether their lands are benefited or not; but only upon validity of the assessment, and its apportionment among the different parcels of the class which the Legislature has conclusively determined to be benefited."

We do not understand the rule to be that a Legislature by its mere *ipse dixit* may declare that benefits will accrue to lands when in fact they are not benefited in any respect, nor may the Legislature confiscate by its act the property of an individual, nor may it tax one person's property for the benefit of another, and deprive the property owners of the right to resort to the courts to test the legality of its action. Your Honors in the late cases of *Wagner v. Leser*, 239 U. S. 207, 60 Law Ed. 230; *Gast Realty Co. v. Schneider Granite Co.*, 240 U. S. 55, 60 Law Ed. 523, and *Myles Salt Co. v. Iberia and St. Mary Drainage District*, 239 U. S. 478, 60 Law Ed. 392, clearly announce the rule to be that in a case of palpable abuse of power, the courts will assume jurisdiction and determine whether the property is being confiscated. Thus you say in the *Wagner-Leser* case, (239 U. S., pp. 219-220) that:

"Taking the decisions in this Court together, we think that it results that the Legislature of a state may determine the amount to be assessed for a given improvement, and designate the lands and property benefited thereby, upon which the assessment is to be made, without first giving an opportunity to the owners of the property to be assessed to be heard upon the amount of the assessment or the extent of the benefit conferred.

"We do not understand this to mean that there may not be the cases of such flagrant abuse of legislative power as would warrant the intervention of a court of equity to protect the constitutional rights of land owners, because of arbitrary and wholly unwarranted legislative action. The constitutional

protection against deprivation of property without due process of law would certainly be available to persons arbitrarily deprived of their private rights by such state action, whether under the guise of legislative authority or otherwise."

Let us apply this rule to the case at bar.

It is the fact that both Article 281 of the Constitution of the State of Louisiana and Act 317 of the Legislature of 1910, the laws in force when this tax was imposed, clearly prohibited the imposition of the tax of the character in question here upon marsh lands. Those laws specifically declared that a tax of this character, that is, an acreage tax, imposed by a vote of the people, could be levied only upon natural drained lands or lands which drained by gravity. As to lands which had to be leveed and pumped, the drainage commissioners were required upon petition of the land owners to incur debt against such lands in an amount sufficient to drain and reclaim them. Under the Constitution and law in force at that time, all gravity drained lands were declared to be benefited by a particular system of drainage, i. e., a gravity drainage system, and in the case of those lands which would not drain naturally—which had to be leveed and pumped—another system was to be adopted in order to benefit them—a system of dykes and pumps for reclamation. The lawmaker virtually said to the Board: "You are created to drain the lands of this district. In doing this work, however, you must benefit those lands. If the lands will drain naturally by gravity, a gravity system of drainage will benefit them. If they do not drain naturally then the only system of drainage that

will prove of benefit is a system of levees and pumps. Therefore your authority to levy taxes depends upon the character of the land, and you cannot say that lands which must be levied and pumped will be benefitted by a system of gravity drainage for we tell you that such lands must be reclaimed, and that there is no authority in you to change the rules which we lay down for your government and direction."

In other words the Constitution and the statutes have provided what character of drainage will benefit certain lands. This being the case, how was a drainage board, created under those laws, able to exercise any more discretion or greater powers than was vested in it by the Constitution and laws which brought it into existence? It, of course, could not.

In order to carry out a drainage scheme the commissioners were authorized to divide the district into sub-drainage districts, which were treated as political corporations. Here the Board could have incorporated in a sub-drainage district, all of the lands which drained naturally and have levied taxes against those lands by a vote of the taxpayers. It could then have incorporated in another sub-drainage district, lands which were to be reclaimed, and have levied taxes and assessments against those lands upon petition of the property taxpayers. The commission, however, called an election and under the authority of that election attempted to levy taxes against lands which were of the character that had to be leveed and pumped. This tax then, was not levied by a petition of the property taxpayers or in a manner required by the Constitution and laws of the State,

but in direct contravention of that Constitution and those laws.

The plaintiff came into Court and alleged that the tax was imposed in contravention of the Constitution and laws of Louisiana and that the imposition of the tax amounted to the confiscation of its property in that the property would not be benefited except by a system of reclamation, that the drainage system constructed from the proceeds of the 16 cents acreage tax could not and did not benefit the lands. The proof is that these lands will not be benefited by the proposed system of drainage (Tr., p. 93), and that in order that they may be at all benefited, an additional system of drainage must be installed, for the reclamation of the lands, which would entail the imposition of a tax from \$2.00 to \$2.50 per acre, funded into bonds to run for a period of from thirty to forty years, (Tr., p. 92), which tax would be imposed under the authority of a petition of land owners. It is further shown that the high lands of the district are benefited by the system of drainage (Tr., pages 91 to 93). Then we have a case where the board is attempting to tax the low lands of this district for the purpose of constructing a system of drainage which will benefit only the high lands, when the low lands of the district cannot and will not receive any benefit from the proposed system. This, we submit, is a palpable abuse of power on the part of the drainage board, and is violative of the rule laid down by this Court in *Wagner v. Leser*, 239 U. S. 207; *Gast Realty Co. v. Schneider Granite Co.*, 240 U. S. 55; *Myles Salt Company v. Iberia and St. Mary Drainage District*, 239 U. S. 478.

Under these circumstances the Legislature did not have the power originally to adopt any such scheme of drainage and to thus attempt to tax the plaintiff's property. As it had no such authority in the first instance, it could not do, by retroactive law, what it was unable to accomplish originally. Therefore this constitutional provision cannot be treated as a curative statute curing defects in the assessment of this tax.

Counsel for defendant, however, strenuously contended in the State Court that this constitutional provision did cure any defect existing in the imposition of this tax, and cited in support of his contention decisions of this Court rendered in the following cases:

United States v. Heintzen & Co., 206 U. S. 1100; *Utter v. Franklin*, 172 U. S. 416; *Anderson v. Santa Anna*, 116 U. S. 359; *Beloit v. Morgan*, 7th Wallace 623; *Ritchie v. Franklin County*, 22nd Wallace, 76, and others.

These decisions do recognize the rule that in certain instances the Legislature may declare legal by a curative statute having a retroactive effect, an act which it could have originally authorized to be done. The reason of the rule is that there may be irregularities in proceedings of a public body which equity and good conscience requires should be cured. The rule does not apply however, where the act sought to be validated is void *ab initio*, or where the defect which is attempted to be cured is jurisdictional. It applies only where the defect declared legal constitutes merely an irregularity. Thus Mr. Cooley in his work,

"*Constitutional Limitations*" (7th Edition), page 530, lays down the rule to be:

"A retrospective statute curing defects in legal proceedings where they are in their nature irregularities only, and do not extend to matters of jurisdiction, is not void on constitutional grounds, unless expressly forbidden."

And further, page 545, he states:

"But if township officers should assume to do acts under the power of taxation which could not lawfully be justified as an exercise of that power, no subsequent legislation could make them good. If for instance, a part of the property in a taxing district should be assessed at one rate, and a part at another, for a burden resting equally upon all, there would be no such apportionment as is essential to taxation, and the roll would be beyond the reach of curative legislation. And if persons or property should be assessed for taxation in a district which did not include them, not only would the assessment be invalid, but a healing statute would be ineffectual to charge them with the burden. In such a case there would be a fatal want of jurisdiction; and even in judicial proceedings, if there was originally a failure of jurisdiction, no subsequent law can confer it."

Page & Jones in their work on "*Taxation by Assessment*" Volume 2, page 1650, Section 979, announce the same principle, saying:

"Under guise of curative provisions, the Legislature cannot, however, dispense with the constitutional rights of the property owners, nor can it provide that a violation of such constitutional rights

shall not invalidate the assessment. The Legislature may restrict the methods in which the property owners may after confirmation attack the assessment."

And at page 1651, Section 981:

"Statutes which provide that an assessment shall not be void because of irregularities, and the like, are not applicable where there is no power to levy the assessment, as where the same tract of land has been assessed twice, to different persons, and in different amounts, or where jurisdictional defects exist. On the other hand, such statutes are applicable where the omissions and irregularities are non-jurisdictional, and do not work substantial injustice. A departure from statutory provisions causing a substantial injustice, invalidates the assessment under such curative statutes. Accordingly, we find that curative statutes of the type under discussion do not apply where the ordinance is void, but do apply where the ordinance was enacted irregularly, as where it was not voted on on two different days."

And at page 1657, Section 983, it is said:

"If the statute purports to cure all defects in the assessment, including the failure to observe the constitutional rights of the property owner, as well as to comply with the requirements which are merely statutory, it is held that such statute is valid as to such requirements which are merely statutory, although it is invalid as to the constitutional requirements."

The Court of Minnesota in the case of *McCord v. Sullivan*, 85 Minnesota 344, 89 N. W. 989, announces the same rule in the following language:

"It is true that the Legislature may cure irregularities and defects in tax proceedings, but that irregularities and defects which go to the jurisdiction of the officers to act, and affect the substantial rights of the property owner, cannot be cured by subsequent legislation, is thoroughly settled by authorities: *Cooley on Taxation, Second Edition*, 302. As said in *Black on Tax Titles*, Section 434: 'Defects in those (tax) proceedings, or the omission altogether of proceedings which might have been originally dispensed with, may be cured; but if the defect is jurisdictional (that is to say, if it goes to the root of the authority to act; if it involves the omission of a step which the Legislature could not have dispensed with), * * * then it is beyond the reach of a curative statute.'

What is the situation in the instant case? There was no power in this board to levy the tax of this character upon the plaintiff's lands. It was prohibited from so doing by the Constitution and laws of the State of Louisiana, under which it was created, and it was equally barred from exercising the right by the 14th Amendment to the Constitution of the United States. Therefore the defect in this proceeding was not a mere irregularity on the part of the Board due to the failure on its part to comply with some form of law, but the illegality arises from the fact that there was no inherent power in the board to levy this tax in the manner that it did, or to levy the tax upon the property of the plaintiff herein. Then the action of the board at its very inception was void. It had no jurisdiction to perform this act. The defect is jurisdictional and it could not be ratified by a curative statute of the State of Louisiana, nor

by a curative provision inserted in the Constitution of the State.

We respectfully submit that on this point the contention of the defendant is unsound, and that it cannot be successfully contended that this act of the Drainage Board, void at its inception, has been cured.

We respectfully submit that under the pleadings and the evidence in this case, that the decree of the Honorable the Supreme Court of the State of Louisiana, giving effect to the amendment to Article 281 of the Constitution of the State and refusing to entertain jurisdiction of this cause deprived the plaintiff in error of its vested property right, its cause of action, without due process of law, all in contravention of the 14th Amendment to the Constitution of the United States.

Respectfully submitted,

MILLING, GODCHAUX, SAAL & MILLING,
Attorneys for Plaintiff in Error.

R. E. MILLING,

R. C. MILLING.

Of Counsel.

November 10th, 1919.

APPENDIX A.

UNITED STATES OF AMERICA.

State of Louisiana.

Supreme Court of the State of Louisiana.

New Orleans, Monday, June 30th, 1919.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:

Frank A. Monroe, Chief Justice.

Olivier O. Provosty, Walter B. Sommerville, Chas. A. O'Niell, Ben C. Dawkins, Associate Justices.

His Honor, Mr. Justice Provosty, pronounced the opinion and Judgment of the Court in the following case:

No. 23,026.

Godchaux Company, Incorporated,

versus

Albert Estopinal, Jr., Sheriff and Ex-Officio Tax
Collector, et al.

Appeal from the Twenty-ninth Judicial District Court,
Parish of St. Bernard; R. Emmet Hingle, Judge.

The plaintiff company is one of the owners of the lands situated within the limits of the Terre aux Boeufs Drainage District. It assails the validity of a local assessment by the said District on the lands of said district; and seeks

to enjoin the sheriff and ex-officio tax collector from enforcing the payment of said local assessment. The grounds are that the local assessment is a gravity drainage assessment, levied by virtue of an election, whereas the said land of plaintiff is not susceptible of drainage by gravity, but only, if at all, by pumping; and that said land cannot possibly be benefited by the drainage work which is purposed to be done by means of said assessment, and that therefore the levying of said assessment on said land is a taking of property without due process of law, in violation of the constitution of the state and of the United States.

A plea to the jurisdiction of the court was filed, and sustained; and the suit was dismissed. Other defenses were filed; but they were not considered by the trial court.

The basis of said plea to the jurisdiction is, that bonds predicated on the annual levying of said assessment upon the lands of said district, have been issued by said district, and are now outstanding; that said bonds have not heretofore been declared by judgment of court to be invalid, and more than sixty days has elapsed since the promulgation of the proceedings evidencing their issuance; that they are wholly dependent for their payment upon the annual collection of said assessment; and, hence, that an attack upon said assessment is an attack upon them; that therefore the courts of this State are without jurisdiction *ratione materiae* to entertain such a suit as the present,—in view of Art. 281 of the Constitution, reading:

“All bonds heretofore issued under and by virtue of this Article 281 of the Constitution by the governing authority of any sub-division, which have

heretofore not been declared invalid by a judgment of a court of last resort in the State of Louisiana and more than sixty (60) days have elapsed since the promulgation of the proceedings evidencing the issuing of said bonds, are hereby recognized and declared to be valid and existing bonds and obligations of the district or sub-division issuing the same, and no court shall have jurisdiction to entertain any contest wherein their validity or constitutionality is questioned."

In opposition to this plea to the jurisdiction, the plaintiff contends that inasmuch as at the time of the adoption of said constitutional provision the sixty day limit it provides for, within which the validity of bonds may be contested, had already expired in the case of the bonds in question in the present suit, the said provision, as applicable to the present suit, is violative of the Constitution of the United States, in that it deprives the plaintiff company of its property without due process of law.

The argument in support of that contention is, that a right of action is property within the meaning of the said provision of the Federal Constitution; and that by the said Art. 281 of the State Constitution the right of action of plaintiff to contest said bonds is taken away without any opportunity being afforded to assert it.

Plaintiff does not deny that to contest the validity of the assessment is to contest the validity of the bonds,—the bonds being wholly dependent upon the assessment for their payment; but contends that to cut off in the manner attempted to be done by this Art. 281 the right to contest

said assessment without any opportunity being afforded to be heard in the courts, is to deprive plaintiff of its property without due process of law, in violation of the Fourteenth Amendment of the Federal Constitution.

Defendant denies that the right of plaintiff to contest judicially the validity of said assessment, is property within the meaning of said amendment.

We think differently. This assessment, if illegal, as contended by plaintiff that it is, is an unlawful invasion of property; and the right to contest judicially any unlawful invasion of property, is what in organized society constitutes property. Without this right we could call our own only such of our possessions as we could protect by brute force against invasion. Without the right to contest judicially any attempted invasion of property under color of a State law, the 14th Amendment would be a mere dead letter. Suppose that this assessment instead of being, as the contention is that it is, a taxing of plaintiff's land for the drainage of somebody else's were a taking of all the mules and carts of plaintiff's plantation for being made a gift of to the neighboring plantation, would anybody say that the Fourteenth Amendment would not protect plaintiff's right to resort to the courts for preventing such a taking. It seems to us the question is not debatable. And yet the only difference between the case here supposed and the present one is that the taking in the supposed case would be manifestly illegal or without due process of law, whereas in the present case the proposed taking may not be so; and counsel argue that it is not so; and that even if it had

originally been illegal it would not now be so, because of the said provision of Art. 281 by which all illegalities have been cured.

In the contention that the assessment is legal, or that its illegalities have been cured, the court may agree with defendant when these questions come to be considered; but for considering them the court would have to entertain jurisdiction of the suit; and the sole question presented on the present appeal is as to whether the trial court should have entertained jurisdiction of the suit.

It is also said that the right of action of plaintiff was prescribed at the time the suit was filed. But this again is a question that can be passed on only by entertaining jurisdiction of the case.

It is said, however, that since the courts of this State exist and have jurisdiction only in so far as the Constitution of the State provides, they cease to have jurisdiction when the Constitution withdraws jurisdiction from them.

That is ordinarily true; but not when the effect would be to violate the Fourteenth Amendment of the Federal Constitution. That point was decided in the cases of *White v. Hart*, 13 Wall. 646; 20 L. Ed. 685, and *Osborne v. Nicholson*, *Id.* 689. In the first of these cases the Constitution of Georgia, and in the second the Constitution of Arkansas, had sought to take away from the Courts of the State jurisdiction to enforce contracts having a slave consideration. The Court held this constitutional provision null as violating the provision of the Federal Constitution against the impairing of the obligation of contracts. The cases are

authority for the proposition that if the effect of withdrawing jurisdiction from the Courts is to deprive a person of a protection secured by the Federal Constitution, the provision withdrawing the jurisdiction is null. The Fourteenth Amendment was invoked in that case for the protection of a contract; in the case at bar it is being invoked for the protection of property; the protection afforded by said amendment to property is no less full and complete than that afforded to contract.

The learned counsel for defendant say that the Federal Courts were open for the exercise of plaintiff's right of action, and that therefore plaintiff was not deprived of it.

No doubt, plaintiff might have gone into the Federal Courts; but we agree with plaintiff that when the effect of withdrawing jurisdiction from the State Courts would be to deprive a litigant of his property without due process of law, the Fourteenth Amendment is violated by such withdrawal even though the litigant might have relief in the Federal Courts. The State cannot authorize the property owner to be deprived of his property, and deny him all state protection against the illegal taking. It stands to reason that the due process of law of which a person cannot be deprived by state legislation, constitutional or other, has necessarily to be some process provided by the state herself, and not by some foreign jurisdiction. The plaintiff company for instance, cannot be told: You have not been deprived of all remedy, since you have one in the Courts of Mexico, or of the State of Mississippi. The legal

relations of the State of Louisiana with the United States are much more intimate than with Mexico or Mississippi, all the same there is a legal, or governmental, boundary between the state of Louisiana and the United States which is as definite and certain, for all the purposes of the present discussion, as is the same boundary between the state of Louisiana and these other sovereignties. The courts of the United States are no more the courts of the State of Louisiana than the courts of Mexico are. The states are sovereign for all the purposes of their internal administration; and the injunction of the Fourteenth Amendment to them: You shall not deprive any person of property without due process of law, is addressed to them in their character of sovereignties: hence the process of law of which they must not deprive any person is their process of law,—a process to be provided by themselves as sovereigns in what concerns their own internal administration. The due process of law of which these sovereign states are thus enjoined not to deprive any person of, is not the due process of law afforded by the United States or Mexico; but is the due process of law afforded by the state herself; and that prohibition evidently violated by legislation the avowed purpose of which is to deprive a person of all process of law, as is the case with the said constitutional provision. For illustration, suppose such an impossible thing were as that the same philanthropic person should undertake to hold harmless those persons who should be deprived of their property without due process of law by the states, would it be said that, because of this indemnity the state legislation which deprived

those persons of their property was not violative of the due process of law clause. And, after all has been said, one thing remains certain, and that is that, inasmuch as plaintiff's right of action in the state courts in protection of its property is property, the plaintiff company has been deprived of its property to the extent that it has been deprived of its right of action in the state courts.

Counsel for defendant say that the question of the constitutionality of the said Art. 281 of the Constitution of Louisiana, in so far as withdrawing jurisdiction from the state courts to pass on the validity of said local assessment, has already been decided twice by this court;—in the cases of *Godchaux v. Estopinal*, 142 La. 812, and *Badger v. Estopinal*, 143 La. —; 79 South. 335.

In those cases, which were companion cases, involving precisely the same issues, the court was not asked to refuse to entertain jurisdiction, but, on the contrary, the prayer of the defendant (the same in both suits) read:

“Wherefore respondent prays that this suit be dismissed at plaintiff's cost, and that defendant have judgment against the plaintiff maintaining the validity of the said special acreage taxes or forced contribution levied against plaintiff's property by the Board of Drainage Commissioners of the Bayou Terre aux Boeufs Drainage District, and that an attorney's fee of ten per cent on the amount of the taxes enjoined by the plaintiff be allowed Respondent prays for costs and general relief.”

In those cases, the trial court, expressly refused to pass on the question of jurisdiction. In lengthy reasons for

judgment it considered the case elaborately on its merits, and affirmed the validity of the local assessment. The defendant did not appeal from that judgment, and did not file in this court an answer to the appeal. The question of jurisdiction can hardly be said therefore to have been before this court for decision. True, this court, in passing on said cases, quoted the said constitutional provision, and based its judgment upon the bar established by it; but it did not disclaim jurisdiction: on the contrary, it entertained jurisdiction, as the lower court had done, and affirmed the judgment as rendered by the lower court; that is to say, decreeing the validity of the said assessment. The language of a decision has to be taken in connection with the substance of the decision; for it is the substance, or effect, of the decision the court has in mind while using the language;—and not infrequently the language is much broader, or more sweeping, than the decision itself, and cannot serve as a precedent, but has only such authority as it inherently carries.

The judgment appealed from is therefore set aside, the plea to the jurisdiction is overruled, and the case remanded to be proceeded with according to law.

Monroe, C. J., dissents.

United States of America.

State of Louisiana.

Supreme Court of the State of Louisiana.

I certify the foregoing to be a true copy of the opinion and judgment rendered in the case of *Godchaux Company*,

Incorporated v. Albert Estopinal, Jr., Sheriff and Ex-Officio Tax Collector, et al, No. 23,026, which opinion and judgment however, have not become final because an application for a rehearing has been filed in this case, and has not, as yet, been passed upon by the Supreme Court.

IN TESTIMONY WHEREOF, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 6th day of November, *Anno Domnini*, one thousand, nine hundred and nineteen.

(SEAL)

PAUL E. MORTIMER,
Clerk, Supreme Court of Louisiana.



IN THE
UNITED STATES SUPREME COURT

OCTOBER TERM, 1919.

No. 432

GODCHAUX COMPANY, INCORPORATED,
Plaintiff in Error,
versus

**ALBERT ESTOPINAL, JR., SHERIFF OF THE PARISH
OF ST. BERNARD, AND THE BOARD OF DRAIN-
AGE COMMISSIONERS OF THE BAYOU
TERRE-AUX-BOUEFS DRAINAGE
DISTRICT.**

Defendant in Error.

In Error to the Supreme Court of the State of Louisiana.

Supplemental Brief of Plaintiff in Error.

May It Please The Court:

In reading over our original brief herein, we find that we have not fully shown the Court the theory upon which drainage districts are created and forced contributions im-

posed under the laws of Louisiana. We have discussed same to a certain extent on pages 42 and 45 of our original brief, but crave the indulgence of the Court to more fully exemplify the laws relative to the drainage of lands in the State of Louisiana, as such laws are not modeled or framed upon the old theory that every drainage district is an assessment district, but are organized under and by virtue of the Constitution of the State of Louisiana and of the laws enacted thereunder, and such a district is a minor political subdivision of the State having the power of taxation as well as the power to impose forced contributions. Sec. 1, Act No. 256 of 1910.

The power to create drainage districts is vested in the Police Juries of the various Parishes of Louisiana and in the drainage commission or governing authority of such district is vested the authority of creating smaller districts or subdrainage districts, which correspond to what is commonly known as assessment districts in other States. Act 317 of the Acts of 1910, page 542, was the law in existence at the time that this tax was levied. Section 1 of that Act in part provides:

"Be it enacted by the General Assembly of the State of Louisiana, that the Police Juries of the various Parishes of the State of Louisiana, are authorized and empowered, **upon their own initiative**, to divide their respective parishes into one or more Drainage Districts * * *" (Black letters ours.)

So the Police Jury of a parish may by simple resolution and upon its own initiative, create the entire Parish

into a drainage district. To apply this law to Southwest Louisiana, there is not a parish where the entire area could be drained by natural or gravity drainage. Most every parish embraces lands that are at, or a little above tide level, and therefore it is utterly impossible to drain same by gravity. So the same section of the same Act makes further provision for the dividing up of a district created by the Police Jury into sub-drainage districts. It reads as follows:

"In all cases wherein Drainage Districts have been or will be organized by the action of the Police Juries under the provisions of this Act, and the Drainage Commissioners should deem it expedient, or necessary for the better drainage of the District, to divide the same into sub-drainage districts, they shall have the right to do so by a simple resolution to that effect, defining the limits of such Sub-drainage District. Such Sub-drainage District, however, shall be composed only of lands that are **especially benefited** by the particular reclamation or drainage that is proposed to be inaugurated for the purpose of draining the same, and may be composed entirely of lands of one individual or corporation."

Under the Amendment of the Constitution of the State of Louisiana, Article 281, (Act 197 of the Acts of 1910, page 332), drainage districts are declared to be minor political subdivisions of the State, are authorized to levy and collect taxes and forced contributions. The second paragraph authorizes the levying of acreage taxes not to exceed 50 cents per acre, by a vote of the property taxpayers

qualified as electors under the Constitution and laws of the State. The second paragraph declares that:

"When the character of any land is such that it must be leveed and pumped in order to be drained and reclaimed, the Board of Drainage Commissioners of the district in which the land is situated shall, upon the petition of not less than a majority in acreage of the property taxpayers, resident and non-resident, in the area to be affected, ascertain the cost of draining and reclaiming said land and incur debt against said land for an amount sufficient to drain and reclaim it, and issue for said debt negotiable bonds running not longer than forty (40) years from their date and bearing interest at a rate not exceeding five (5) per centum per annum, payable annually or semi-annually * * and said Board of Drainage Commissioners shall levy annually upon said land forced contributions or acreage taxes in an amount sufficient to maintain the drainage of said land and to pay the interest, annually or semi-annually, and the principle falling due each year * * * provided, that such forced contribution or acreage taxes, for all purposes shall never exceed three dollars and fifty cents (\$3.50) per acre per annum."

So this provision of the Constitution recognizes the two systems of drainage that are necessary to be installed. The limit of a forced contribution on lands that can be drained by gravity is 50 cents per acre; whereas on lands that must be leveed and pumped in order to be drained and reclaimed, the limit is \$3.50 per acre. High lands that will drain by gravity are worth, unimproved, from \$30 to \$50

per acre. Marsh or swamp lands that must be leveed and pumped in order to be drained and reclaimed are worth from \$1 to \$2 per acre and cost from \$30 to \$50 per acre to drain and reclaim them. A less tax than an amount sufficient to drain and reclaim them would be useless, as partial drainage, while beneficial on gravity drained lands, is absolutely worthless as far as lands that must be leveed and pumped are concerned. So under these rules, a drainage commission must proceed to the drainage of the district. If the commissioners have in their districts lands that may be drained by gravity and also lands that must be leveed and pumped, then clearly it is the duty of the Commission to divide those areas up into subdrainage districts for the purpose of draining the same. Those areas that can be drained by gravity will be put into one subdrainage district or assessment district, and lands that must be leveed and pumped put into another assessment district or subdistrict. When these districts are formed and the boundaries established, and a proposition is made to levy and collect forced contributions thereon, then it will be the duty of the landowner to resist the placing of his land in a taxing district, wherein it would be impossible for him to secure any benefit from the contemplated works, but he would have no standing in Court to prevent the inclusion of his land into a general district, when such was admittedly land that would be benefited by the drainage system.

Such is the character of lands in this Southwestern Louisiana territory, and such is admittedly the character of the lands embraced within the Bayou Terre-aux-Boeufs Drainage District. As shown in our original brief those

lands fronting on the Mississippi River drain naturally to the rear, and are susceptible of gravity drainage back to the distance of possibly a mile, or in some places a greater depth. Those lands along the Bayou Terre-aux-Boeufs drain in the same manner back toward the marshes and swamps, but the ridge which would drain by gravity is not so wide. On these lands that would drain by gravity, there could be imposed an acreage tax by the vote of the property taxpayers, qualified as electors under the Constitution and laws of the State of Louisiana, but there is no authority in such taxpayers to vote a tax upon lands not drained by gravity. The purpose of this law is perfectly apparent to anyone who is familiar with the character of Louisiana lands. All lands that must be leveed and pumped in order to be drained and reclaimed are not inhabited; there are no qualified electors residing upon them, and therefore, the only means of consulting the owners to ascertain whether or not they would agree that an acreage tax be imposed upon the same would be by petition, and that petition is not controlled by the number of individual owners, but by the acreage owned by residents and non-residents, as clearly set forth in the Article of the Constitution. For the law to have permitted qualified electors to vote a tax upon lands that must be leveed and pumped in order to be drained and reclaimed would be to authorize such electors to tax the lands of others for the benefit of their own land. Such was the attempt on the part of the qualified electors residing in the district in the instant case. Those residents along the banks of the Mississippi and along the banks of the Bayou Terre-aux-Boeufs voted

a 16 cent acreage tax and have used the avails thereof for the purpose of digging out the Bayou Terre-aux-Boeufs and improving the gravity drainage of their lands, but have not in the slightest benefited the lands that do not drain by gravity. It was not incumbent upon the property owners of that district, nor, indeed, would they have a standing in Court, to have contested the inclusion of their lands in this general district, because they would have to be included in a general district before a subdrainage district or assessment district could be formed therein. It therefore is perfectly apparent that there is no question in this case of laches on the part of the landowner in failing to oppose the inclusion of his land in the district. He is in ample time when he finds that there is no drainage contemplated that will benefit his low lands, and he then comes forward and challenges the authority of the electorate of that district or of the drainage commission to impose a tax upon his land in contravention of the Constitution and laws of Louisiana under which the district itself was formed and the commissioners derived their power.

The lands embraced in this district, if they are ever drained, will have to be formed into subdrainage or assessment districts or units. There might be a half dozen formed in that one district; in fact, there has been two, possibly three, subdistricts formed of lands in that district, and at least one of the subdistricts found itself so burdened with taxation by the imposition of this 16 cent acreage tax, together with other taxes necessary to reclaim it, and having suffered disaster from the storm of two years ago, has nev-

er been able to recover, and all of the lands have been forfeited to the State for non-payment of the taxes, or else have been purchased by these so-called innocent holders of the bonds of said district.

Respectfully submitted,

MILLING, GODCHAUX, SAAL & MILLING,
Attorneys for Plaintiff in Error.

R. E. MILLING,
R. C. MILLING,
Of Counsel.

November 10, 1919.

FILED

NOV 17 1919

JAMES D. BAHER,
CLERK.

SUPREME COURT OF THE UNITED STATES

October Term, 1919.

No. 101

GODCHAUX COMPANY, INCORPORATED

Plaintiff in Error,

~~VERSUS~~

ALBERT ESTOPINAL, JR., SHERIFF OF THE PARISH
OF ST. BERNARD, AND THE BOARD OF DRAIN-
AGE COMMISSIONERS OF THE BAYOU
TERRE-AUX-BOEUF'S DRAINAGE
DISTRICT,

Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

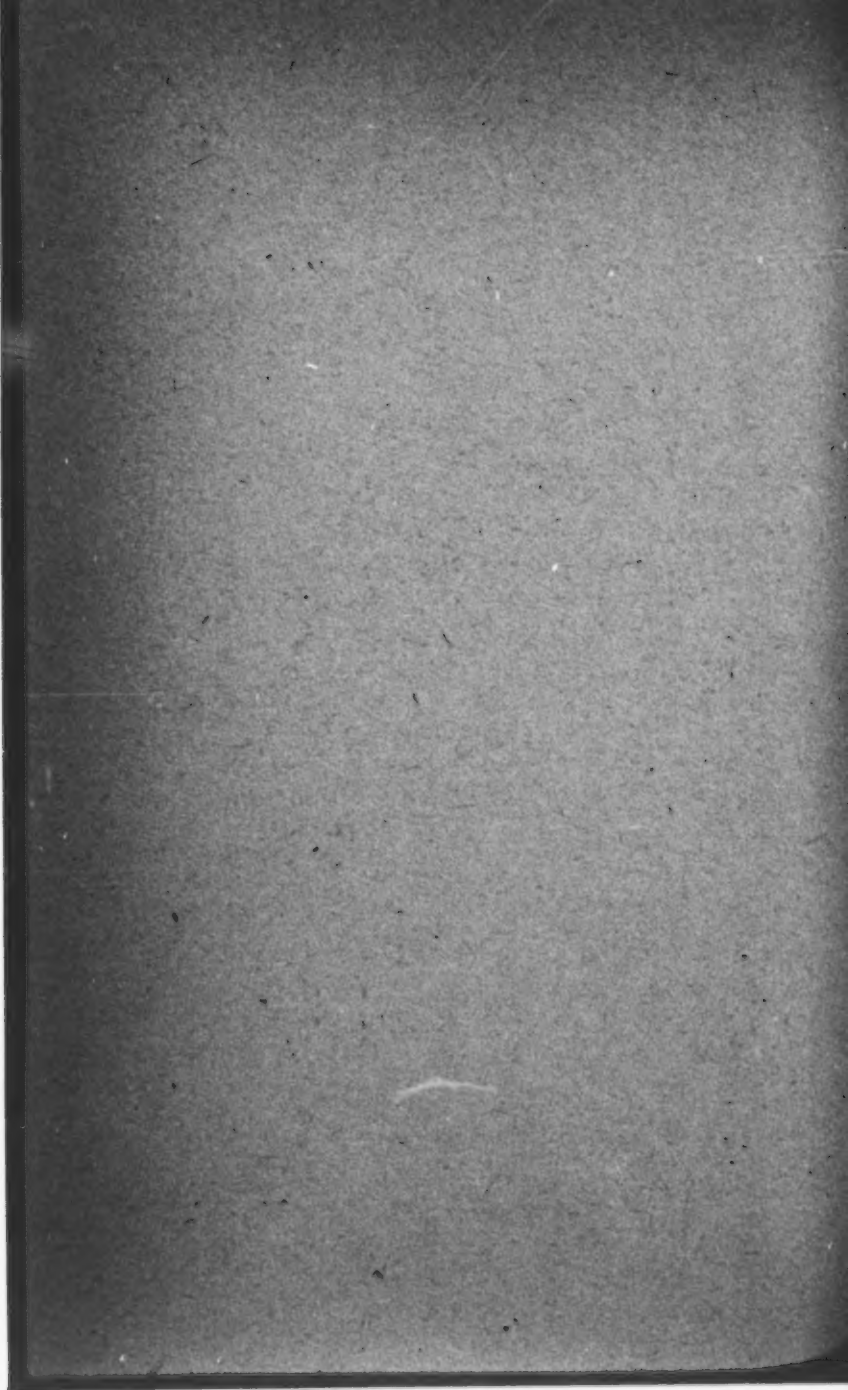
Brief on Behalf of Defendants in Error.

WM. WINANS WALL,

Attorney for Defendants in Error.

N. H. NUNEZ,

District Attorney, Ex-Officio Attorney for the Bayou
Terre-Aux-Boeufs Drainage District.



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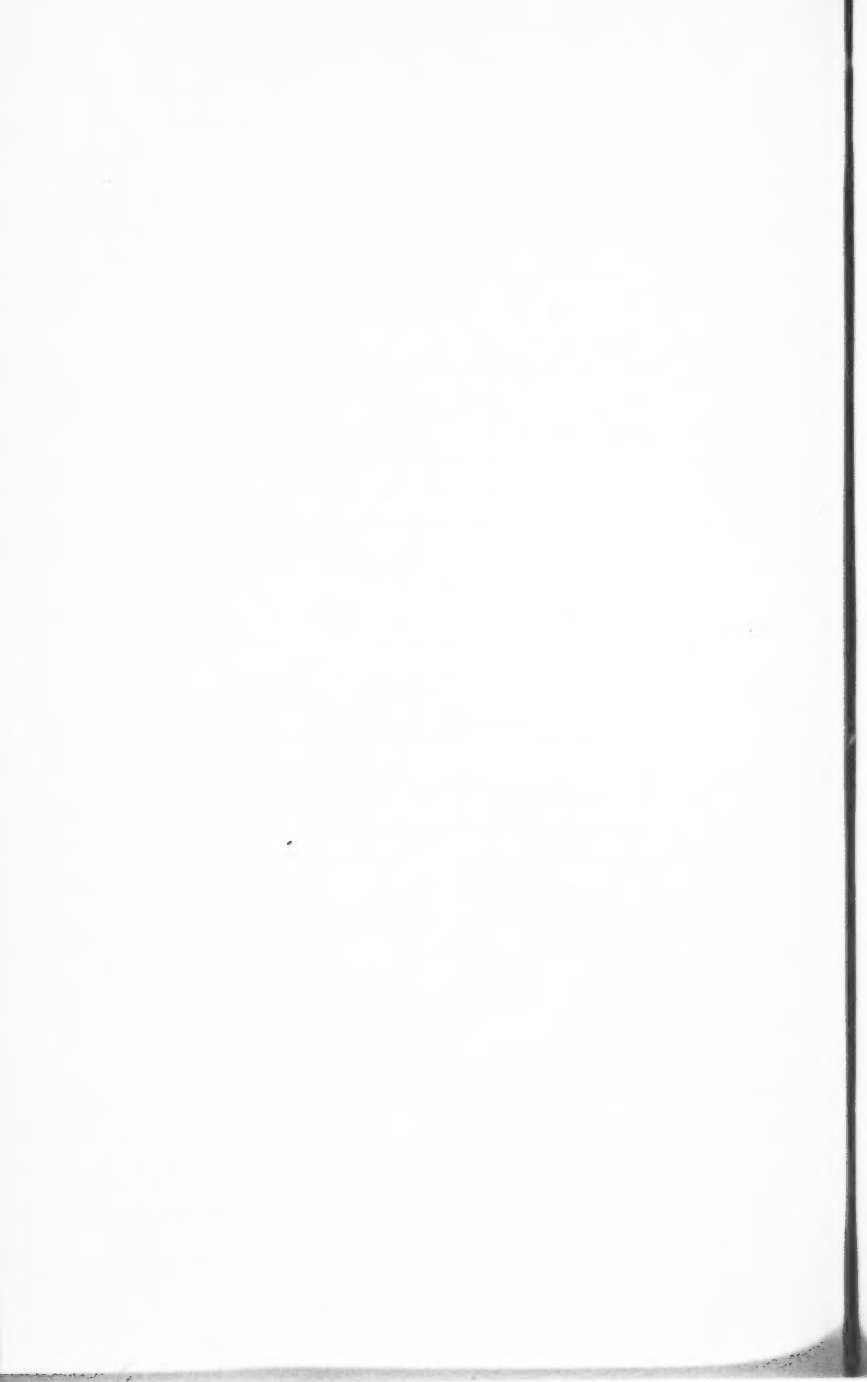
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SUPREME COURT OF THE UNITED STATES

October Term, 1919.

No. 101

GODCHAUX COMPANY, INCORPORATED

Plaintiff in Error,

versus

ALBERT ESTOPINAL, JR., SHERIFF OF THE PARISH
OF ST. BERNARD, AND THE BOARD OF DRAIN-
AGE COMMISSIONERS OF THE BAYOU
TERRE-AUX-BOEUFs DRAINAGE
DISTRICT,

Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

Brief on Behalf of Defendants in Error.

SYLLABUS.

I.

There is no such thing as a vested right in the jurisdiction of a court, or any particular remedy; the right to try one's case in any court is subject to the right of the sovereign to abolish, or change the jurisdiction of that court.

If the right to prevent the collection of a local assessment or special tax to pay for a public improvement, because of lack of power on the part of the municipality to levy and collect the tax, is a vested right, it came into being, subject to the right of ratification by the sovereign of the tax or local assessment so imposed, and is not protected against validation or ratification by the Fourteenth Amendment to the Constitution of the United States.

A curative law may validate anything that might have been authorized in advance.

The sovereign people of the State have plenary power over all private and social rights, and all existing laws and institutions, and may even violate the most fundamental rules of justice, limited only by the Constitution of the United States.

The Fourteenth Amendment, by its very terms, refers only to "property", and no "vested rights" can be included within that term, by any stretch of interpretation, except "vested rights" in and to "property." Giving to the word "property its broadest signification, so as to include everything susceptible of ownership, movable or immovable, corporeal or incorporeal, it cannot possibly be extended to remedies given merely for the enforcement of property rights. Still less can the power of taxation of a municipal corporation be subject of ownership by an individual, in such sense, that the diminution or taking away thereof by the competent power can be considered as depriving him of his property.

II.

By Par. 2 of Article 281 of the Constitution, as said article was from 1906 to 1914, Boards of Commissioners of Drainage Districts throughout the State of Louisiana

were authorized to install systems of drainage without any restriction whatsoever as to the character of such systems, and, when authorized at an election by a majority in number and amount of the property taxpayers, to levy special acreage taxes on all of the land throughout the respective drainage districts to pay the cost of such systems. It was only in 1914 that Paragraph 2 of Article 281 of the Constitution was amended, and the system of drainage that might be provided thereunder restricted to gravity drainage system and the right to levy the tax limited to land susceptible of gravity drainage.

Where a special tax has been voted and levied, according to law, to pay for a public improvement and the tax has been funded into bonds and the bonds sold and the proceeds used to pay for the public improvement, the fact that the legislative body authorizing the tax made an honest mistake as to the benefits to be realized, such failure of benefits would not be a reason for repudiating the special tax so levied.

Davidson v. N. O., 96 U. S., 72;

Spencer v. Merchant, 125 U. S., 345, 355.

"The right to enforce or protect a constitutional right in a court of equity may be lost by laches, the same as other rights."

Ency. of U. S. Supreme Court Reports, Vol. 4, p. 80; *Pennsylvania Mutual Life Ins. Co. v. Austin*, 168 U. S., 685.

"Under some circumstances a party who is illegally assessed may be held to have waived all right to a remedy by a course of conduct which renders it unjust and inequitable to others that he should be allowed to complain of the illegality. Such a case would exist if one should ask for and encourage the levy of the tax of which he subsequently complains; and some of the cases go so far in this direction as

to hold that a mere failure to give notice of objections to one who, with the knowledge of the person taxed, as contractor or otherwise, is extending money in reliance upon payment from the taxes, may have the same effect.

Cooley on Taxation, p. 573, and the cases cited in note 5; *Tagh v. Adams*, 10 Cush., 252; *Bidwell v. City of Pittsburgh*, 85 Pa. St., 412; *Shutte v. Thompson*, 15 Wall., 151; *Shepard v. Barron*, 194 U. S., 553; *Andrus v. Board of Police of Opelousas*, 41 An., 697; *Tulare Irrigation District v. Shepard*, 185 U. S., 25, 26.

STATEMENT OF THE CASE.

This is a suit brought by Godchaux Co., Inc., to enjoin the Sheriff and ex-Officio Tax Collector of the Parish of St. Bernard, from collecting an acreage tax of sixteen cents per acre, for the year 1915, levied by the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, on each and every acre of land situated within the limits of said drainage district, by authority conferred by the property taxpayers, at an election held on January 10, 1911, in pursuance of the power vested by Article 281 of the State Constitution, as amended in accordance with Act 197 of 1910, on 3,635.52 acres of swamp or marsh land, forming a part of the Contreras Plantation, situated within the limits of the Bayou Terre-aux-Boeufs Drainage District, which land is not susceptible of being drained by gravity. The Contreras Plantation contains, in addition to the swamp or marsh land, 565.56 acres of land, which is susceptible of being drained by gravity

In the petitions, the validity of the said acreage tax is attacked on two grounds:

1st. That, under the Constitution, no acreage tax could be imposed by authority of a vote of the property taxpayers upon any land in the Bayou Terre-aux-Boeufs Drainage District not susceptible of gravity drainage; and,

2nd. Because the system of drainage, adopted by the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, has not benefited and will not benefit the said swamp or marsh land, and the claim is made that to enforce the payment of said annual acreage tax would deprive the plaintiff of its property, without due process of law.

Plaintiff also avers that it has paid all of the taxes, assessed against its said swamp or marsh land, except the said sixteen cents acreage tax, and that it has paid all taxes including the sixteen cents acreage tax, upon its said land, which is susceptible of gravity drainage.

A preliminary writ of injunction, restraining the collection of the taxes *pendente lite*, was issued.

The Sheriff and ex-Officio Tax Collector and the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District have filed separate answers. Both answers raise substantially the same defenses, which are:

1st. A plea of estoppel, based on allegations to the effect that the Police Jury of St. Bernard Parish, while the provisions of Act 159 of 1902, were in force, created the Bayou Terre-aux-Boeufs Drainage District, legally and politically, and delimited territorially said drainage district, and the Board of Commissioners was then organized and assumed jurisdiction of all of its affairs and of all of the land within

its boundaries, that, thereafter the Board of Drainage Commissioners, with the assistance of the Board of State Engineers and its own engineer, adopted a general plan of drainage for the Bayou Terre-aux-Boeufa Drainage District, and from 1906 up to 1910, caused five elections to be held by the property taxpayers of the district, to vote *ad valorem* and acreage taxes to defray the costs of constructing that general system of drainage; that those elections resulted in the levy of an annual three cents per acre tax upon every acre of land within the district, and funding the same into an issue of sixty thousand dollars (\$60,000.00) of bonds; and, 2nd., the levying of an annual six cents per acre tax on every acre of land within the district, and funding the same into bonds; that, during the years 1911 and 1912 the Board of Commissioners caused two elections to be held, which resulted in the voting and levying of the sixteen cents per acre tax, on every acre of land in the district, to be used to defray the costs of constructing a general system of drainage; that the results of the elections were promulgated, by publication, according to law; that the validity of the bonds was litigated and passed on four times by the Supreme Court of Louisiana, before they were sold; that the plaintiff and its predecessors, while said drainage district was being created, and its Board of Commissioners organized, and said taxes voted and levied, and said bonds issued and sold, not only failed and neglected to make any protest, but on the contrary, from the years 1909 to 1914, both inclusive, paid, not only the three and six cents acreage taxes, but also the sixteen cents acreage taxes on its swamp or marsh land, not susceptible of being drained by gravity, and thereby, unqualifiedly and unmistakably, announced its acquiescence in

and approval of all proceedings resulting in the levy of the said taxes and in said levies themselves.

2nd. That an honest mistake of judgment, on the part of the legislative department of the State, in determining benefits to accrue from the construction of a public improvement, constitutes no ground for annulling special taxes or forced contributions in aid of the construction of the public improvement, particularly where such special taxes or forced contributions have been funded into bonds, which have been sold, for their par value, to the public.

3rd. That the special acreage tax of sixteen cents per acre, levied on all land throughout the Bayou Terre-aux-Boeufs Drainage District, is valid, and not subject to attack by plaintiff, and that all of the requirements of law were complied with by the tax collector, up to the time of the issuance of the preliminary writ of injunction.

4th. That the court is without jurisdiction *ratione materiae*, to entertain this suit, because an attack on said special acreage tax or forced contribution of sixteen cents per acre, levied by the property owners and the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District, is an attack on the bonds into which said tax has been funded, and the jurisdiction to entertain any such contest where such bonds have not been declared invalid by a judgment of the court of last resort in the State of Louisiana, and more than sixty days have elapsed since the promulgation of the proceedings, evidencing the issuance of said bonds, without said bonds having been attacked on account of fraud, was withdrawn from all the courts of the State of Louisiana, and such bonds declared to be valid and existing bonds or obligations of the sub-

division issuing them, by the Amendment to Article 281 of the Constitution adopted in 1914.

The case was fully tried on the pleadings as made up in the Twenty-ninth Judicial District Court in and for the Parish of St. Bernard, State of Louisiana, and, for exhaustive written reasons, to be found in the record, pp. 53-65, the trial judge decided the case on the merits in favor of the defendants and dismissed plaintiff's suit.

The plaintiff appealed to the Supreme Court of Louisiana, which court affirmed the judgment of the District Court, but based its opinion wholly upon the paragraph of Article 281 of the Constitution of Louisiana, as amended in 1914, reading as follows:

"All bonds heretofore issued under and by virtue of this Article 281 of the Constitution by the governing authority of any subdivision, which have heretofore not been declared invalid by a judgment of a court of last resort in the State of Louisiana and more than sixty (60) days have elapsed since the promulgation of the proceedings evidencing the issuing of said bonds, are hereby recognized and declared to be valid and existing bonds and obligations of the district or subdivision issuing the same, and no court shall have jurisdiction to entertain any contest wherein their validity or constitutionality is questioned." (Act No. 192, Acts of Louisiana of 1914, p. 372).

The plaintiff then brought the case by writ of error to this court, under the following assignment of error:

"Your relator now shows that the Supreme Court of the State of Louisiana, in giving effect to the above mentioned amendment to Art. 281 of the Con-

stitution of the State of Louisiana, has given effect to a state law which is violative of the Constitution of the United States of America, in that the said above-quoted amendment to the Constitution of the State of Louisiana, by depriving the court of jurisdiction in cases therein mentioned, has barred a vested right of action (the property and right of your relator) to contest the validity of the acreage tax or enforced contribution which relator claims was illegally levied and assessed upon its lands, thereby destroying the right vested in relator to resort to the court for the purpose of contesting the validity of said tax.

"That, for this reason, said amendment to Article 281 of the Constitution of the State of Louisiana, above quoted, and the opinion and decree of the Honorable, the Supreme Court of the State of Louisiana, giving effect to said amendment, divest your relator of its vested right of action, which vested right of action exists in your relator and is recognized by the laws of the State of Louisiana and the United States of America, and deprives it of its property without due process of law, and denies to it the equal protection of the law. That the said constitutional amendment, as well as the opinion and decree of the Honorable, the Supreme Court of the State of Louisiana, giving effect to said amendment, are violative of the Fifth and Fourteenth Amendments to the Constitution of the United States of America."

The Supreme Court of Louisiana decided only a plea to the jurisdiction of that court, based on the fact that the validating clause of Article 281 of the Constitution of 1914 had validated the bond issue and the proceedings levying the tax, which was a part of the bond contract, and deprived all courts of Louisiana of jurisdiction to entertain any suit,

in which the validity of the bonds so validated was questioned.

ARGUMENT.

May it Please Your Honors:

The learned counsel, representing Plaintiff in Error, has attacked the validity of the paragraph of Article 281 of the State Constitution, quoted *supra*, claiming that it deprives Plaintiff in Error of its rights, in violation of the Fourteenth Amendment to the Constitution of the United States. Their whole case is pitched on this ground. Of course, counsel recognize that, prior to the adoption of the Fourteenth Amendment to the Federal Constitution, each state had an absolute, unrestricted right to deprive one person of property and vest it in another, without violating the Federal Constitution. The prohibition against laws divesting vested rights, prior to that time, applied wholly to the Federal Government. *Encyclopedia of U. S., Supreme Court Reports, Vol. 4, p. 433.*

In discussing the case, we desire to argue two questions:

First. Had the State of Louisiana (meaning thereby the sovereign people of the State) the power to take from the courts of Louisiana, its mere creatures, the jurisdiction to entertain any suits questioning the validity of bonds validated by the paragraph of Article 281 of the Constitution *supra*?

Second. Did the sovereign State of Louisiana have the power to validate all bonds which would include all proceedings levying taxes and funding the same into bonds there-

tofore issued by subdivisions of the State, under Article 281 of the State Constitution, where more than sixty days had elapsed since the promulgation of the proceedings evidencing the issuance of said bonds?

FIRST.

An argument of the first question involves three others, which we will discuss with as much brevity as possible, to-wit:

(a) Had the Plaintiff in Error the right to bring its case, which arises wholly under the Constitution of the United States, in the United States District Court?

(b) Had the Plaintiff in Error such a right to bring its case in the state court, prior to the adoption of the validating paragraph of Article 281 of the Constitution of Louisiana, that to force it to resort to the United States District Court would deprive it of its vested rights in violation of the Fourteenth Amendment to the Federal Constitution?

(c) If question (a) be answered in the affirmative, would the Plaintiff in Error have the right to attack the constitutionality of the paragraph of Article 281 of the Constitution, on the ground that it would deprive others of their property, without due process of law?

(a)

Section 24 of the Judicial Code of the United States, so far as applicable to this case, reads, as follows:

"Sec. 24. The district courts shall have original jurisdiction as follows:

"First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or

by any officer thereof authorized by law to sue, or between citizens of the same state claiming lands under grants from the different states; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different states, or (c) is between citizens of a state and foreign state, citizens or subjects. *

• •"

If the Plaintiff in Error has any case at all, it is one arising under the Constitution of the United States, and the United States District Court would have jurisdiction, if more than three thousand dollars is involved.

We submit that more than three thousand dollars is involved in this case. It is well established that the proceedings by which an acreage tax of sixteen cents per acre was imposed and funded into bonds is a part of the bond contract, and is, therefore, an integral part of the bonds.

It is true that the obligation of the taxpayer of the district is to pay a certain amount of this indebtedness each year, until the whole debt shall have been discharged, but each installment is a part of the whole debt, and to adjudge that one installment is due, is to adjudge that the whole debt is due. Furthermore, as appears from the petition, and, particularly, the prayer, Plaintiff in Error is seeking to repudiate liability for its proportionate share of the whole debt, represented by the bonds, which would amount to more than \$30,000.00.

The case is not the same, with respect to ordinary taxes that are imposed from year to year. The jurisprudence is to

the effect that where an ordinary tax, levied each year, to meet the expense of the government for that year, is attacked, the thing in dispute is the tax of the particular year; but the same line of reasoning would be wholly inapplicable to the case of a local assessment, where a fixed sum to pay for an improvement is incurred as a debt, and is payable in instalments. Then, when you attack one of the installments, for reasons going to the validity or invalidity of the whole debt, you are attacking all installments, and are barred by the judgment maintaining the validity of one of the installments.

The authorities submitted, to the effect that where an ordinary tax, for governmental purposes of a given year, is in dispute, the only thing involved is the amount of the tax for that year, have absolutely no application to installments of a local assessment due for a debt to pay for a public improvement.

We think there can be no question that what is in dispute in this case is the legality or validity of the bond contract.

The matter in dispute being the validity of the bonds which includes the bond contract, the amount of that contract would be the amount in controversy, regardless of the individual liability of Plaintiff in Error—but, even its individual liability, is in excess of \$30,000.00.

In a number of analogous cases, the Supreme Court of Louisiana has held that the amount of the contract was the test of jurisdiction.

In the case of *Handy, et al. v. City of New Orleans*, 32 La. An., 107, this question was discussed. The court said:

"The first question to be determined is whether the plaintiffs have a standing in court.

"It is unnecessary to indulge in any discussion of long-mooted, but now apparently settled question: Whether taxpayers, or even one of them, have a right to contest judicially, as plaintiffs, the validity of municipal ordinances, at which they level the charge of illegality, for any cause.

"The sedate doctrine, after much contrariety of opinions and considerable vascillation among the courts, seems to be: That the right of property holders, or taxable inhabitants, is recognized, to resort to judicial authority to restrain municipal corporations and their officers, from transcending their lawful powers, or violate their legal duties, in any unauthorized mode which will increase the burden of taxation, or otherwise injuriously affect taxpayers and their property; such as unwarranted appropriation and squandering of corporate funds, and unjustifiable disposition of corporate property; an illegal levy and collection of taxes not due or exigible, etc. We accept this conservative doctrine.

"The recognition of that privilege is predicated on the principle, that it is proper that those who may be immediately affected by the abuse, should be armed with the power to interfere, directly and at once in their own name, in a mode which affords an easy, prompt and adequate preventive relief against an evil which might otherwise entail irremediable wrong.

"The exercise of that right or privilege is the more justified when the law does not vest a state or an officer with the power to seek redress.

"In such instances the action is regarded as having a public character and as being a public proceeding in which the public complains. *Crampton vs. Zabinski*, 101 U. S. 601; *New London v. Brainard*, 22

Conn., 552; *Baltimore v. Gill*, 31st Md., 375; 79 Ind., 1; *Cooley on Tax.*, 548; *Dillon on Mun. Corp.*, 914 to 937, and authorities in notes.

"Our legislation is silent on this subject. Hence taxpayers enjoy the prerogative of protecting themselves by their own act in proper cases. This conclusion is fortified by additional considerations suggested by the instant case itself, which will now be developed.

"Let it be supposed that the city authorities were to consider the ordinance and lease attacked as *ultra vires*, and the corporation was judicially to demand their annulment, could the lessees, for one moment, be heard to except to the want of capacity of the city, to ask relief and to object to the jurisdiction of the court?

"Unquestionably not, for two obvious reasons, that a party to the contract has the undeniable right to demand judicially its annulment for a proper cause and that in such a case a court of limited lower jurisdiction, but unbounded otherwise, would surely be competent to pass upon the validity of a contract of a value far in excess of the jurisdictional initial point.

"In this case the execution of the ordinance under the lease is stated as yielding a profit nearing annually \$100,000. The contract which is the matter in dispute, clearly exceeding \$2,000, the lower court and this court have jurisdiction over it.

"It is quite apparent that in such a case had the lessees been cast, they would undisputably have had the right to appeal, and so of the city if defeated. The law in this regard cannot, and does not discriminate between litigants by denying to the one what it accords to the other.

"If the taxpayers have the privilege of doing that which the city could have, but has not, done, and if the

lessees could have appealed, it would indeed be monstrous to say that the plaintiffs are denied the same privilege.

"It is true that the plaintiffs have not alleged in explicit terms that, owing to the charged violations of the law by the city authorities, the burden of taxation which they and other taxpayers are required to bear will be increased, and that they will be injuriously affected thereby beyond measure, but the plaintiffs have done what is equivalent to it, and what is an unavoidable corollary.

"They have stated facts, which, if true, may, and no doubt do, materially cripple to some considerable extent, the commercial business of the city and deprive the city of important revenues which otherwise might be raised by taxation, both on property and persons in the shape of taxes on stock in trade or of license.

"The right which the city could have, but has not exercised, the taxpayers can therefore judicially champion and vindicate in proper cases, just as fully and effectually as through the corporation itself had brought the action.

"Hence the plaintiffs have a standing, and both courts have jurisdiction over the contention." 39 La. Ann., pp. 107-110.

In the case of *Conery v. Waterworks Company*, Id. p. 772, the court said:

"This precise question was invoked in the case of *Handy, et al. v. City of New Orleans*, recently decided and not yet reported.

"Like the instant one, that was a case where a number of tax payers and residents of the city joined in a suit for the annulment of a contract and ordinance of the city touching the wharf lease, on

grounds very similar in every respect to those urged in the case before us.

"We quote from the syllabus of that case to show the identity of the question involved in the two cases and how they were decided:

"Taxpayers have a standing in court to contest upon proper charges the validity of a municipal ordinance and contract executed under it, whenever its enforcement may increase the burden of taxation.

"A district court, the lower limit of whose jurisdiction is fixed, has jurisdiction to pass on such controversy when the matter in dispute, which is the value of the contract, exceeds that limit; and the Supreme Court has jurisdiction on appeal when the value exceeds \$2,000.' "

See also, *State v. City of New Orleans*, 50 La. Ann., 85; *Item Co. v. City of New Orleans*, 51 La. Ann., 712.

In the case of *Sugar, et al., v. City of Monroe*, 108 La., 677, the court said:

"Citizens who have voted to tax themselves for a specific work of public improvement, the value of which is fixed at \$20,000, have a standing in court to complain that the property acquired is not being used for the purpose contemplated, and this court in such a case has jurisdiction of the appeal."

In the case of *Speryer v. Miller, Constable, et al.*, 108 La., 203, the court said:

"Where a homestead is seized, and the seizure is enjoined, the matter in dispute in the injunction suit is the homestead, and not the amount of the judgment sought to be executed; and the injunction suit must be filed in another court than that of the

seizure, if the latter court has not jurisdiction *ratione materiae*."

In the case of *Fontenot v. Young*, 128 La., 26 the court said.

"Defendants move to dismiss the appeal on the ground that plaintiffs do not show a pecuniary interest to the amount of \$2,000, and hence that this court is without jurisdiction *ratione materiae*.

"It has, however, been held on more than one occasion that:

"Taxpayers have a standing in court to protest, upon proper charges, the validity of a municipal ordinance and contract executed under it, whenever its enforcement may increase the burden of taxation'

"And that

"A district court, the lower limit of whose jurisdiction is fixed, has jurisdiction to pass upon such controversy when the matter in dispute which is the value of the contract exceeds that limit, and the Supreme Court has jurisdiction on appeal when that value exceeds \$2,000. *Handy et al. v. New Orleans et al.*, 39 La. Ann., 107; *Conery, et al., v. Waterworks Co., et al.*, 39 La. Ann., 770; *State ex rel. Orr v. City*, 50 La. Ann., 880; *Sugar v. City of Monroe*, 108 La., 681.

"The principal involved is the same where the taxpayer contests the constitutionality of a statute, by the enforcement of which the burden of taxation may be increased, and under the rulings referred to the test of jurisdiction is the amount involved to the public, rather than that which the taxpayer individually may have at stake. In the instant case, we have no doubt that the people of the parishes of St. Landry and Evangeline have an interest exceeding \$2,000 in value in the decision of the question presented.

"The motion to dismiss the appeal is therefore denied." 128 La., 26-27.

Therefore, we think there can be no doubt that when Plaintiff in Error filed this suit in the state court, it had the right to bring its case, which is one arising under the Constitution of the United States, in the United States District Court for the Eastern District of Louisiana.

(b)

If there be any vested right in the jurisdiction of a particular court, it comes into being, subject to the right of the sovereign to abolish that court, or to modify or regulate its jurisdiction. There can be no question about the power or right of the sovereign State of Louisiana to change or modify the jurisdiction of its courts, as it may see fit, any more than there could be a question, at this day, as to the right of the United States to change the jurisdiction of its courts.

The Supreme Court of Louisiana has decided this question point blank, in the case of *Meyers, Testamentary Executor, v. Mitchel*, 20 La. Ann., p. 533.

In that case, an appeal had been taken, in 1866, to the Supreme Court of Louisiana from a judgment rendered for \$300.00 by the Third District Court for the Parish of Orleans. In 1868, the State Constitution was amended so as to fix the lower limit of the Supreme Court of Louisiana at \$500.00. The plaintiff moved to dismiss the appeal in that court, on the ground that the amount of the judgment was not sufficient to maintain jurisdiction.

In that case, as in this, it was contended that to apply the amendment of the State Constitution of 1868 to the case

would deprive the defendant (he having appealed his case before the amendment was adopted) of his vested rights, in violation of the Federal Constitution—a case so apposite to the position taken by Plaintiff in Error that we reproduce the opinion in full:

"On the 12th of June, 1866, judgment was rendered in this case in favor of the plaintiff by the court *a qua*, for the sum of three hundred dollars, with eight per cent interest from the 21st February 1862, until paid and costs.

"On the 13th of June, 1866, defendant appealed, and on the 7th of November, 1866, the transcript of appeal was filed in this court.

"The plaintiff now moves to dismiss the appeal, on the ground that the amount of the judgment is not sufficient to confer jurisdiction on this court.

"By the Constitution of 1868, Article 74, the jurisdiction of the Supreme Court in civil matters extend to 'all cases where the matter in dispute shall exceed five hundred dollars, and to all cases in which the constitutionality or legality of any tax, toll or impost of any kind or nature whatsoever, or any fine, forfeiture, or penalty imposed by a municipal corporation, shall be in contestation, whatever may be the amount thereof.'

"It is admitted that the case at bar, being an ordinary judgment on promissory notes, is not one of those included in this enumeration, but it is contended on behalf of the appellant that inasmuch as he had the right to appeal on the 13th of June, 1866, and took his appeal, his rights as an appellant became 'vested rights,' which the Constitution of 1868, could not, lawfully, take away.

"In our opinion this view is erroneous. Even if a vested right exists, as claimed, (which we are by no means ready to admit) it may have lawful-

ly taken away by a new constitution, provided the obligations of the contract were not impaired.

"A prohibition which would control the people of the State in this regard, if in existence, would be found in the Constitution of the United States, but that instrument will be seached in vain for any such limitation on the popular will.

"A state Constitution may be retrospective in its operation, and may divest vested rights, yet if it does not impair the obligations of a contract or partake of the character of an *ex post facto law*, it will not contravene the Constitution of the United States. *Staterlee v. Matthewson*, 2 Peters, 380; *Charles River Bridge v. Warren Bridge*, 11 Peters, 420.

"It will be readily perceived, that the prohibitions contained in the State Constitution, Article 110 respecting vested rights, are addressed only to the government organized under the Constitution, and cannot be deemed to control the people in framing and adopting the Constitution itself.

"It has been urged again, that the right to prosecute the appeal in this and similar cases has been preserved by Articles 149 and 151, of the new Constitution; the former of which provides that all rights, actions, prosecutions, claims, contracts, and all laws in force at the time of the adoption of this constitution, and not inconsistent therewith, shall continue as if it had not been adopted, etc., etc., and the latter of which directs that the General Assembly shall provide for the removal of causes now pending in the courts of this State to courts created by and under this constitution. We cannot assent to this doctrine, but on the contrary, we think it clear, that the right of appeal in this case is one that is 'inconsistent' with the terms of the new Constitution, and is not continued by Article 149, and that Article 151 cannot save it. It is true that by the latter article the Legislature is required to provide for the removal

of causes pending in the late Supreme Court to the present Supreme Court, and has done so; but neither this injunction, nor its fulfillment seem to effect the jurisdiction of this court. The causes have been transferred, the records are on file in this court, and it seems clear that the question whether the cause shall be tried or dismissed, must be determined by Article 74.

"It is indeed urged in the discussion of this subject that if this court has no jurisdiction by reason of the insufficiency of the amount in dispute, it can make no order in the case, and, therefore, cannot make an order dismissing the appeal. This theory is ingenious, but unsound. A court can always say that it has no jurisdiction of a case, and dismiss it with costs. In this respect we can perceive no difference between a case transferred to us by an act of the Legislature in compliance with the constitutional command, and a case brought to us by an appellant, since the organization of this court.

"It is therefore ordered that the appeal herein be dismissed with costs." *20 La. Ann.*, 533-534.

We find no authority in the Constitution of the United States for the conclusion that the United States has the power to maintain and operate a state court, and Congress has recognized this fact, by providing, as far as it saw necessary, for the protection of Federal rights in the district courts of the United States.

The authorities all hold that there is no vested right in a particular remedy, and if the Plaintiff in Error had some court to open it, it is impossible that its vested rights could fall within the protection of the Fourteenth Amendment to the Constitution of the United States. All of the authorities are against the theory of Plaintiff in Error that

there is a vested right in the jurisdiction of any particular court..

We find in the Encyclopedia of the United States Supreme Court Reports, Volume 4, p. 444, the proposition broadly stated:

"Destruction or Impairment of Remedy.—There is no vested right to any particular remedy. The Legislature may at its discretion take away those which exist and substitute others which shall apply to existing rights and wrongs as well as to those arising thereafter."

"Destruction of Remedy by Abolishing the Jurisdiction.—If a law conferring jurisdiction is repealed without any reservations as to pending cases, all such cases fall with the law."

The jurisdiction or power of the courts of Louisiana to try cases in Louisiana is conferred by the Constitution of that State, and the exercise of such jurisdiction or power is regulated by the Legislature. No court has any jurisdiction or power except such as has expressly been conferred by its creator, or may reasonably be inferred from the act by which it is created. *A fortiori*, proceedings in a case which a court is forbidden by its creator to entertain is absolutely null, the merest *brutum fulmen*, and a judgment rendered by the court in such proceedings depriving a citizen of his property rights would be no judgment at all, and if carried into effect, would deprive the litigant of his property without any process of law whatsoever.

There can be no doubt that the sovereign people of Louisiana have the absolute, unrestricted right to create and regulate the jurisdiction or power of and abolish their courts; they have the same power to withdraw jurisdiction

as they have to confer it. The fact that a suit of the class as to which their jurisdiction may be withdrawn, at the time, is pending in an appellate court, would not exempt that suit from the effect of the constitutional provision withdrawing the court's jurisdiction, or power, to entertain it.

The Federal constitution, as originally passed, contained no inhibition of suits by citizens of another state, or by citizens or subjects of any foreign state, against one of the United States. In fact, many such suits were brought and were pending when the 11th amendment was adopted. Then the question arose as to the effect of that amendment on suits so pending at the time of its adoption. After elaborate argument by the most eminent lawyers of the day, this court promptly decided that the effect of the amendment was the abatement of the cases. *State of Georgia v. Bailsford, et al.*, 2 Dall., 402; *Chrishold v. State of Georgia*, 2 Dall., 419; *Hollingsworth v. Virginia*, 3 Dall., 378.

In the case of *U. S. v. Boisdore's Heirs*, 8 How., 121, the court said:

"It is true that this court can exercise no appellate power over this case, unless it is conferred upon it by act of Congress. And if the laws which gave it jurisdiction in such cases have expired, so far as regards to claims in the State of Mississippi, its jurisdiction over them has ceased, although this appeal was actually pending in this court when they expired."

In the case of *Insurance Co. v. Ritchie*, 5 Wall., 544, the same principle was recognized. The court said:

"It is clear, that when jurisdiction of a cause depends upon a statute, the repeal of the statute takes away the jurisdiction, and it is equally clear, that where a jurisdiction conferred by statute, is prohibited by a subsequent statute, the prohibition is, so far, a repeal of the statute conferring the jurisdiction."

In line with these two decisions are the cases of *Ex Parte McCardle*, 7 Wall., 560, and *Assessors v. Osbornes*, 9 Wall., 567.

The Supreme Court of Louisiana had occasion to recognize the correctness of this principle on several occasions.

In the case of *Hoyle v. N. O. City R. R. Co.*, 23 Ann., 502, the court said:

"From and after the passage of the act creating the Eighth District Court of the Parish of Orleans, the other district courts of the parish were divested of all jurisdiction over cases in which exclusive jurisdiction was given to the Eighth District Court. The signing of a judgment in an injunction suit by the judge of the Sixth District Court, after the passage of the act creating the Eighth District Court, is therefore null and without legal effect, because the Sixth District Court was divested of jurisdiction over the case."

And in the case of *Knox v. Garrett*, 28 An., 601, the court said:

"This suit was instituted in 1866. At that time, the District Court had jurisdiction, but the constitution of 1868 intervened. Under that Constitution the Parish Court alone has jurisdiction over such cases. The constitution is, of course, supreme, and when it

gives to parish courts exclusive jurisdiction over such succession matters as relate to settlement of accounts, it necessarily deprives all other courts of the power of exercising jurisdiction."

(c)

As we have shown above, Plaintiff in Error has not been deprived of any of its constitutional rights by the withdrawal of jurisdiction from the state courts. It is without any interest to raise the question of the constitutionality of the validating paragraph of Article 281 because it would deprive others, differently situated from it, of their constitutional rights.

Article 15 of the Code of Practice of the State of Louisiana would seem to dispose of the contention of the Plaintiff in Error in this respect.

"Art. 15. Interest in Action or Plea. An action can only be brought by one having a real and actual interest, which he pursues, but, as soon as that interest arises, he may bring his action."

In the case of *New Orleans Canal and Navigation Company v. The City of New Orleans*, 12 La. Ann., 365, the court said:

"Nor can the present company be heard to plead that the legislation of 1835 and 1839 was unconstitutional in impairing the vested rights of the old company; that was a matter entirely between the State and the old company, in which this company has no interest, because it is not the universal successor of the other; that legislation certainly impaired no vested rights of a company which came into being ten years afterwards; and it is only for the party

whose rights are invaded to plead the nullity of a law impairing the obligation of a contract." 12 La. Ann., pp. 365-366.

Again, in the case of *Lucas E. Moore v. City of New Orleans, et al.*, 32 La. Ann., p. 745, the court said:

"A law unconstitutional,, because it impairs the obligation of contracts, is only null so far as the rights of those persons are concerned, the obligations of whose contracts are thereby impaired. As to all other rights and all other persons, it is entitled to full force and effect. *Mandry v. Monroe*, 1 Mich. 68; *Cargill v. Power*, 1 Mich., 369; *Baker v. Braman*, 6 Hill., 47." 32 La. Ann., 745.

The rule is laid down generally in the text of the Encyclopedia of U. S. Supreme Court Reports, Vol. 4, p. 73:

"Who May Raise Constitutional Questions. 1. Generally. The general rule that no person has any standing in any court as a suitor, unless he alleges and shows that he has an actionable interest in the rights which he seeks to recover, or that he has suffered or will suffer an actionable injury by reason of the wrongs which he seeks to redress or prevent, applies with full force to persons seeking to raise constitutional questions in the courts of justice. In order to maintain an action or suit, they must establish that they have an actionable interest in the constitutional rights which they seek to protect. A court will not listen to an objection made to the constitutionality of an act by a party whose rights it does not effect, and who has therefore no interest in defeating it; that is, a legal interest in defeating it. The objection to the constitutionality of a statute must be made by one having the right to make it not by a stranger to its grievance. Likewise the uncon-

stitutionality of an act cannot be set up in defense to an action or prosecution by one who is in no wise prejudiced thereby."

As Plaintiff in Error was deprived of no vested right protected by the Fourteenth Amendment to the Federal Constitution by being compelled to exert rights which it claimed to have, under the Constitution of the United States, in the District Court of the United States for the Eastern District of Louisiana, it has no right to complain that there are other persons, differently situated, who would be prejudicially affected by the validating paragraph of Article 281.

SECOND.

We do not think it will be denied, even by the learned counsel for Plaintiff in Error, that the sovereign State of Louisiana would have the right to create and delimit a drainage district, order a system of drainage installed, and a special annual acreage tax of sixteen cents an acre, to be levied on every acre of land in the district for forty years, to be funded into bonds to be sold to provide the money to pay for said drainage system, and prohibit the state courts from entertaining any suit to contest the validity of the bonds; without violating in any respect, the Fourteenth Amendment to the Federal Constitution. This Honorable Court has repeatedly reorganized the power of state legislature, when not restricted by the state constitution, so to do.

In the case of *Spencer v. Merchant*, 125 U. S., 355, the authorities are reviewed:

"The power to tax belongs exclusively to the legislative branch of the Government. *United States v. New Orleans*, 98 U. S., 381, 392; *Meriweather v. Garrett*, 102 *United States*, 472. In the words of Chief Justice Chase, condensing what had been said long before by Chief Justice Marshall, 'the judicial department cannot prescribe to the legislative department limitation upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons; but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected.' *Veazie Bank v. Fenno*, 8 Wall., 533, 548; *McCulloch v. Md.*, 4 Wheat., 316, 428; *Providence Bank v. Billings*, 4 Pet., 514, 563. See also *Kirkland v. Hotchkiss*, 100 U. S., 491, 497. Whether the estimate of the value of land for the purpose of taxation exceeds its true value, this court, on writ of error to a state court, cannot inquire. *Kelly v. Pittsburgh*, 104 U. S., 78, 80.

"The legislature, in the exercise of its power of taxation, has the right to direct the whole or part of the expense of a public improvement, such as laying out, grading or repairing of a street, to be assessed upon the owners of lands benefited thereby; and the determination of the territorial district which should be taxed for a local improvement is within the province of legislative discretion. *Willard v. Presbury*, 14 Wall., 676; *Davison v. New Orleans*, 96 U. S., 97; *Mobile County v. Kimball*, 102 U. S., 691, 703, 704; *Hagar v. Reclamation District*, 111 U. S., 701. If the legislature provides for notice to and hearing of each proprietor, at some stage of the proceedings, upon the question what portion of the tax shall be assessed upon his land, there is no taking of his property without due process of law. *McMillen v. Anderson*, 95 U. S., 37. *Davidson v. New Orleans*, and *Hagar v. Reclamation District*, above cited.

"In *Davison v. New Orleans*, it is held that if the work was one which the State had the authority to do, and to pay for by assessment on the property benefited, objections that the sum raised was exorbitant, and that part of the property assessed was not benefited, presented no question under the Fourteenth Amendment to the Constitution, upon which this court could review the decision of the state court. *96 U. S., 100, 106.*

"In the absence of any more specific constitutional restriction than the general prohibition against taking property without due process of law, the legislature of the State, having the power to fix the sum necessary to be levied for the expense of a public improvement, and to order it to be assessed, either, like other taxes, upon property generally benefited, or only upon lands benefited by the improvement, is authorized to determine both the amount of the whole tax, of the class of lands of which will receive the benefit and should therefore bear the burden, although it may, if it sees fit, commit the ascertainment of either or both of these facts to the judgment of commissioners.

"When the determination of the lands to be benefited is entrusted to commissioners, the owners may be entitled to notice and hearing upon the question whether their lands are benefited and how much. But the legislature has the power to determine, by the statute imposing the tax, what lands, which might be benefited by the improvement, are in fact benefited; and if it does so, its determination is conclusive upon the owners and the courts, and the owners have no right to be heard upon the question whether their lands are benefited or not; but only upon the validity of the assessment, and its apportionment among the different parcels of the class

which the legislature has conclusively determined to be benefited.

"In determining what lands are benefited by the improvement, the legislature may avail itself of such information as it deems sufficient, either through investigation by its committees, or by adopting as its own estimates or conclusions of others, whether those estimates or conclusions previously had or had not any legal sanction.

"In Sec. 4 of the Statute of 1569, the assessment under which was held void in *Stuart v. Palmer*, 74 N. Y., 183, for want of any provision whatever for notice or hearing, the authority to determine what lands lying within three hundred feet on either side of the street, were actually benefited, was delegated to commissioners.

"But in the Statute of 1881 the legislature itself determined what lands were benefited and should be assessed by this statute. The legislature in substance and effect, assumed that all the lands within the district defined in the Statute of 1869 were benefited in a sum equal to the amount of the original assessment, the expense of levying it, and interest thereon; and determined that the lots upon which no part of that assessment had been paid, and which had therefore as yet borne no share of the burden, were benefited to the extent of a certain portion of this sum. That these lands as a whole had been benefited to this extent was conclusively settled by the legislature." 96 U. S., 100, 106.

In the case of *New Orleans v. Clark*, 95 U. S., 653, 654, the court said:

"The act of 1874, which annexed Carrollton to New Orleans, provided that all property, rights and interests of every kind of the former city should be

vested in the latter, and that the debts and liabilities of Carrollton, 'including the funding and improvement bonds, and the bonds issued to the Jefferson City Gas Light Company, and known as gas bonds,' should be assumed and paid by the City of New Orleans; and that city was in terms declared liable therefor. Independently of this legislation, the liabilities of Carrollton would have devolved with its property upon New Orleans, on the annexation to that city, so far, at least, that they could be enforced against the inhabitants and property brought by the annexation within its jurisdiction. *Broughton v. Pensacola*, 93 U. S., 266. Equitable claims which had existed against the dissolved city would continue as before, and be held equally subject to legislative recognition and enforcement, or their payment might be required, as in this case, by the act of annexation. The power of taxation which the legislature of a state possesses may be exercised to any extent upon property within its jurisdiction, except as specially restrained by its own order or the Federal Constitution; and its power of appropriation of the monies raised is equally unlimited. It may appropriate them for any purpose which it may regard as calculated to promote the public good. Of the expediency of the taxation or the wisdom of the appropriation, it is the sole judge. The power which it may thus exercise over the revenues of the state, it may exercise over the revenues of a city, for any purpose connected with its present or past condition, except as such revenues may, by the law creating them, be devoted to special uses; and, in imposing a tax, it may prescribe the municipal purpose to which the monies raised shall be applied. The city is only a political subdivision of the state, made for the convenient administration of the government. It is an instrumentality, with powers

more or less enlarged, according to the requirements of the public, and which may be increased or repealed at the will of the legislature. In directing, therefore, a particular tax by such corporation, and the appropriation of the proceeds to some special municipal purpose, the legislature only exercises a power through its subordinate agent which it could exercise directly; and it does this only in another way when it directs such corporation to assume and pay a particular claim not legally binding for want of some formality in its creation, but for which the corporation has received an equivalent. *The People ex rel, Blanding v. Burr*, 13 Cal., 341; *Town of Guilford v. Supervisors of Chenango County*, 18 Barb. (N. Y.) 615. S. C. 13 N. Y. 143." 95 U. S., 653, 654.

Therefore, we submit that there could be no doubt of the power of the sovereign State of Louisiana to have incorporated in the Constitution of the State an article creating the Bayou Terre-aux-Boeufs Drainage District, providing the identical procedure to levy and assess a special annual acreage tax for forty years against each and every acre of the Bayou Terre-aux-Boeufs Drainage District, and having the tax funded into bonds, and providing that no state court should have the jurisdiction to entertain any suit contesting the validity of the bonds (which includes, as part of the bond contract, all anterior proceedings, just as had been done.

If the sovereign State of Louisiana, without violating the Fourteenth Amendment of the Constitution of the United States, had the power to so provide, can it be denied that the sovereign State of Louisiana would have the power to validate such proceedings by a curative or validating article in its Constitution, operating on proceedings and

bonds purporting to have been theretofore had and issued under Article 281 of the State Constitution, without violating the Fourteenth Amendment?

In *Cyc.*, we have a definition of curative acts and the rule by which their validity is to be determined.

Cyc., Vol. 8, p. 1023:

'B. Curative Acts.—1. Definition. A curative act is one intended to give legal effect to some past act or transaction which is ineffective because of neglect to comply with some requirement of law.

"2. Validity.—a. In General. In general statutes curing defects in acts done or authorizing the exercise powers which act retrospectively are valid, provided the legislature originally had authority to confer the powers or authorize the acts."

In the *Encyclopedia of the U. S. Supreme Court Reports*, Vol. 4, p. 452, we have the rule with respect to testing the curative and validating acts:

"Curative and Validating Acts.—a. General Rules and Principles. In the absence of any constitutional provision to the contrary, a legislature has the power to enact retrospective laws for the purpose of curing irregularities in the execution of contracts, or in the proceedings of municipal and judicial bodies, or for the purpose of supplying defects and omissions in statutes. It may lawfully ratify and validate any act or proceeding which it might have authorized in the first instance or excuse the non-observance of any formality which it might have omitted in the beginning. As applied to contract, such acts do not impair the obligation thereof, but confirm and carry out the intention of the parties thereto; and as to the objection that such laws violate vested rights of property, it has been forcibly

answered that there can be no vested right to do wrong. Claim contrary to justice and equity cannot be regarded as of that character."

With reference to special assessments, and the power of Congress to pass curative or validating statutes, with respect to the same, in the same work, at page 457, we have the following affirmance of the general rule:

"Special Assessments; Powers of Congress. Congress, in exercising its power to legislate over property and persons in the District of Columbia, may confirm the proceedings of an officer in the district, or of a subordinate municipality, or other authority therein, which, without such confirmation, would be void, provided it had the power in the first instance to authorize such officer, board of municipal subdivision to make the improvements and levy the assessments in the manner in which they were made.

"h. Irregularities Affecting County and Municipal Securities. (1) General Rule. If the legislature possesses the power to authorize an act to be done, it can, by a retrospective act, cure the evils arising from an irregular exercise of the power conferred. In the case of bonds issued by a county or municipal corporation, ratification by the legislature is equivalent to original authority, and cures not only an irregular exercise of power, but the want of power as well. Counties and cities being mere political subdivisions of the state created for the more convenient administration of government, their rights, powers and liabilities may be restricted or enlarged as public interests may require; therefore, a statute which validates and requires a municipal corporation to pay a demand which is without legal obligation, but which is equitable and just, is no more retrospective, in a constitutional sense, than

an act which requires the appropriation of funds for the payment of existing obligations, the legislature only exercising through its subordinate agent a power which it could exercise directly."

But, say the learned counsel for Plaintiff in Error, the validating paragraph of Article 281 of the State Constitution divests, in violation of the Fourteenth Amendment to the Federal Constitution, our right to attack the bonds and the proceedings, which right we had at the time the curative or validating paragraph was put into effect by the sovereign people of Louisiana.

The answer to this objection is twofold:

(1) If you did have a vested right to attack the bonds and proceedings, it was not such a vested right as is protected by the Fourteenth Amendment to the Constitution.

(2) Such vested right came into being subject to the right of ratification in the sovereign.

(1).

The Supreme Court of Louisiana has said:

"The Fourteenth Amendment, by its very terms, refers only to 'property' and no 'vested rights' can be included within that term, by any stretch of interpretation, except 'vested rights' in and to property.' Giving to the word 'property' its broadest signification, so as to include every thing susceptible of ownership, movable or immovable, corporeal or incorporeal, it cannot possibly be extended to remedies given merely for the enforcement of property rights. Still less can the power of taxation of a municipal corporation be a subject of ownership by any individual, in such sense, that the di-

minution or taking away thereof by the competent power can be considered as depriving him of his property."

The above quotation is taken from a very able opinion delivered by the late Mr. Justice Fenner, in the celebrated case of *State ex rel. Folsom Bros. v. Mayor and Administrators of the City of New Orleans*, 32 La. Ann., 717-718.

In that case, it was decided that, although prior to the adoption of the Constitution of 1879, the owners of judgments against the City of New Orleans, could force the levy of a tax up to a cent and three-quarters, to be applied to the payment of their judgments, this vested right was taken away by the provision of Article 209 of the Constitution of 1879, which provided "**that no parish or municipal tax for all purposes whatever shall exceed ten mills on the dollar of valuation**", without violating the prohibition against a state taking property, without due process of law, contained in the Fourteenth Amendment to the Constitution of the United States, **except where the judgments were based on contracts.**

The principles announced in that case have become so firmly established in Louisiana jurisprudence that in a number of subsequent cases, it was held necessary, whenever the holder of a judgment, obtained before 1879, sought to have taxes levied to pay his judgment, by the process of *mandamus*, his petition was held to disclose no cause of action, unless it contained an averment that his judgment was founded **upon a contract.**

Louisiana Digest, Vol. 2, Sec. 87, p. 245, lays this down broadly:

"A party claiming to compel a municipal corporation by *mandamus* to levy a special tax to pay a certain judgment held by him, notwithstanding the limitations of Constitution 1879, Art. 209, on the ground that said limitations impair the obligations of his contract with the municipality, and are therefore null and void, must allege and prove that his judgment was founded upon a contract. (See *Griffin v. Shreveport*, 33 La. Ann., 1180; *Fisk v. Jefferson Parish*, 34 La. Ann., 43; *Ranger v. New Orleans*, 34 La. Ann., 202,203; *Seale v. Madison Parish*, 34 La. Ann., 363; *Favroa v. East Baton Rouge Parish*, 34 La. Ann., 492, 493; *Stewart v. Jefferson Parish*, 34 La. Ann., 675; *In re Isaacson*, 36 La. Ann., 59; *Excelsior Planting & Etc. Co. v. Green*, 39 La. Ann., 460)...*State v. St. Martin Parish*, 32 La. An., 884."

The case of *State ex rel. Folsom Bros. v. Mayor & Administrators of the City of New Orleans*, 32 La. Ann., 711-718, is so apposite to this case, that, for the convenience of the court, we reproduce the entire decision:

"Folsom Bros., relators herein, are holders of two judgments against the City of New Orleans, the same being for damages done to their property by a mob or riotous assemblage within the limits of said city, in 1873, for which the city was liable under section 2453 of the Revised Statutes.

"One of said judgments, for \$2,000 became final on July 3d, 1874, the other, for \$26,858, became final in December, 1877. They were properly registered in the office of the Administrator of Public Accounts, on January 15th, 1876, and January 15th, 1877, respectively, in accordance with the provisions of Act No. 5, Extra Session of 1870.

"In their petition herein they state the foregoing facts, and further aver that other judgments against

the city to a large amount had been registered prior to their own, and that it was the duty of the city officers to place them all on the budget, and to levy and collect taxes to pay them; that said city officers had failed and refused to perform said duty; that being prohibited by law from issuing execution upon their said judgments, they are without other remedy except through the levy of taxes for their payment and that the refusal of the city to levy such taxes deprives them of all remedy, and is in violation of their vested rights and of the constitutions and laws of the United States and of the State. They prayed for a writ of *mandamus* commanding the proper officers of the city to place upon the budget for the year 1879, and all succeeding years until the same be fully paid, all the registered judgments, including those of relators, and to impose taxes, in addition to all other taxes required for other expenses, to an amount sufficient to pay and satisfy the whole of said registered judgments.

"The officers of the city made return substantially, that under the provisions of Act No. 31 of 1876, the power of the city to levy taxes, for any purpose whatever, was limited to one and one-half per cent, upon the assed value of taxable property; that the necessary alimony of the government must be provided for before debts can be paid; and that the revenues derived from taxation to the aforesaid limit of the law, and from all other sources, would not be sufficient to provide for the said necessary alimony of the city government.

"The learned judge of the lower court was of opinion that under section 19 of Act No. 7 of 1870, which was in force in 1873, at the time when the causes of action upon which relator's judgments were rendered, originated, the taxing power of the city was only limited to one and three quarters per

cent; that this taxing power so fixed constituted the sole remedy for the enforcement of their claims; that the right to diminish or destroy this taxing power involved the diminution or destruction of the sole remedy of relators, and could not be exercised to the prejudice of relator's vested right to such remedy.

"The court, therefore, made the *mandamus* peremptory so far as to order the budgeting of all judgments prayed for in succeeding years; and that with a view to the payment thereof, respondent be ordered to levy taxes to the extent of one and three quarters per cent., as prescribed by Section 19 of Act No. 7 of the Extra Session of 1870.

"From this judgment, which was signed on February 5th, 1879, the city took this suspensive appeal.

"The first thing that attracts judicial cognizance on the very face of this record, is, that any decree rendered by us herein, ordering the levy of taxes by the City of New Orleans, must operate prospectively only. The past is beyond recall and beyond remedy. If we should affirm the decree appealed from, the effect would be to order the City of New Orleans, in its next and succeeding tax levies, to impose and collect a tax of one and three quarters per cent until all the judgments referred to in the decree are settled. The mere statement of this proposition irresistibly recalls the provisions of Article 209 of the Constitution of 1879, which provides that no parish or municipal tax for all purposes whatever shall exceed ten mills on the dollar of valuation.'

"It is impossible to conceive of any form of expression in which the intention of the framers of the Constitution to restrict absolutely the power of municipal taxation within the limit of ten mills on the dollar could be more positively asserted.

"A tax levied by the City of New Orleans is unquestionably a 'municipal tax.' Such a tax levied for the purpose of paying debts, is yet a tax levied for a purpose, and falls within the all-embracing expression 'all purposes whatever.' And when thus much has been said, it involves the inevitable conclusion that if the constitutional provision is to be operative, and is not restrained in its effect by some higher authority, the city has not the power to levy a tax in excess of ten mills on the dollar, and we cannot compel the city to exercise a power which it does not possess.

"Attempt is made by the counsel for relator to restrict the limitation of this constitutional provision to taxation for the ordinary purposes of government. If such had been the intention of the framers, it would have been easily and naturally expressed. The language used not only does not convey, but absolutely excludes such construction of its meaning. It is, besides, notorious that the object of the limitation was not merely to restrain the extravagance of administrators of municipal corporations, but to relieve property from the burden of excessive taxation.

"The cases relied on to impose this restrictive meaning upon the clause referred to are without application.

"*McCracken v. San Francisco*, 16th California, 591, applied to an article of a city charter, providing that 'the common council shall not create nor permit to accrue, any debts or liabilities which shall exceed \$50,000 over and above the annual revenues of the city;' and held that this only applied to voluntary acts or contracts of the council creating liabilities, and not to liabilities cast upon her by the law, independent of any contract or permission of the council. Such appears to us to be the only possible meaning that could be derived from the language used in the charter itself, and we see nothing in that case that touches the one at bar.

"The case of *Butz v. Muscatine*, 8th Wallace, 575, has still less application. There, it is true, there was a provision in the charter of the City of Muscatine, limiting the power of taxation to one per cent, but there were also co-existing provisions in the general laws of the State requiring corporations, against which judgments had been rendered, after execution returned unsatisfied, to levy a tax as early as practicable to pay off such judgments. In effect, the court merely held that the restriction in the charter did not repeal said general laws, and did not apply to the duty of corporations thereunder to levy taxes to pay judgments. It is evident, we have here no such co-existing status to be interpreted together; nor was the language of the Muscatine charter so broad as that of our Constitution.

"Moreover, in the subsequent case of *United States v. Supervisors*, 18 Wall., 71, the decision in the above case was substantially overruled. Having thus determined the meaning of this constitutional provision, let us now examine the power of the Constitutional Convention to pass such provision.

"The learned judge of the lower court, in his able opinion, was dealing with questions very different from those which we are now discussing. He was considering the effect of mere legislative acts. He held that inasmuch as, at the time when the obligation sought to be enforced by relators originated, the city had the power to levy a tax of one and three quarters per cent and as the sole remedy for the enforcement of said obligation was through the exercise of said taxing powers, therefore, 'if that power could be diminished by subsequent legislation, it might with the same propriety, be withdrawn altogether.' That, he said, could not be done. Why? Because, in his own language, 'it would operate a divestiture of the remedial right which had existed in the relators.' In

other words, the judge held that the subsequent legislative acts restricting the city's power of taxation could not apply to relator's right previously existing, because such application would operate to divest a vested right, in violation of Art. 110 of the Constitution of the State then in force.

"It is unnecessary for us to review the decision of the district judge on this point, because the limitation on the power of the Legislature, imposed by the Constitution of 1868, has no force over the power of the Constitutional Convention.

"A constitution framed by a convention of the people, especially after having been submitted to and ratified by direct vote of the people, is the ultimate expression of the will of the sovereignty itself. Its provisions may control, with plenary power, all private and social rights, and all existing laws and institutions, and may even violate the most fundamental rules of justice; provided, only, they do not conflict with the provisions of the Constitution of the United States, which, with regard to the subjects covered by them, and to those subjects alone, form the paramount law of the land. No court has the right to question the validity of any provision of a state constitution, however unwise, impolitic, or even unjust it may be, upon any other ground whatever than that it violates the Constitution of the United States.

"Cooley on Constitutional Limitations, page 34.

"It follows, therefore, that the provision of the Constitution of 1879 must have full operation and effect, against all persons and against all rights, except so far as its operation is restrained by the Constitution of the United States. It follows, to come more directly to the exact point at issue here, that no person can require the city of New Orleans to levy a greater tax than one per cent unless he can

establish a right in himself to require the levy of such higher tax, and unless he can also show that said right is so protected by the Constitution of the United States, that it could not be taken away by any action of the State. If the State **can** destroy such right, it **has** destroyed it by this provision of its Constitution.

"To begin with, it is settled by an uninterrupted current of authorities that a State may pass laws divesting vested rights without infringing the Constitution of the United States.

"Chas River Bridge v. Warren, 11 Pet., 420.

"Watson v. Mercer, 8 Id., 88.

"Sutterlee v. Matthewson, 2 id., 413.

"Railroad Co. v. Nesbitt, 10 How., 395.

"Matter of Oliver, Lee & Co.'s Bank, 21 N. Y., 9.

"The only provisions of the United States Constitution which could be invoked as protecting relator's alleged right here, are:

"First. The provision forbidding a State to pass any law impairing the obligation of a contract.

"Second. The provisions of the 14th Amendment forbidding the State to 'deprive any person of life, liberty, or property without due process of law.'

"The first provision has no application here. Relator has no right of any kind arising from a contract, express or implied, and no other rights are within the protection of this provision.

"It is settled that claims arising from a tort, and not from a contract, are not so protected.

Dash v. Vanleck, 7 Johns., 477.

Amy v. Smith, 1 Litt., 326.

Thayer v. Seavey, 11 Me., 284.

"The position of counsel that this is not an obligation arising from a tort, but an obligation imposed by law on the city in favor of a third person, and in

the nature of a stipulation *pour autrui* accepted by such third person, and, therefore, equivalent to a contract, is not sustained by any authority. The only case in which we have found that question adverted to holds distinctly that 'those rights which the law gives to, or obligations which it imposed upon, persons in certain relations, independently of any stipulations which the parties themselves have made,' are not within the protection of this clause.

"*Robinson v. Howe*, 13 Wis., 341.

"We are, however, unable to perceive any distinction between the obligations arising under Sections 2453 of the Revised Statutes and those arising under the Articles of the Civil Code relative to offenses and *quasi* offenses. It merely expressly extends to municipal corporations that responsibility for damage occasioned by their fault or negligence, or by the fault or negligence of their servants or overseers, which rests upon natural persons under Articles 2315, 2316 and 2320 of the Civil Code. It has been a subject of frequent judicial discussion, and of contradictory decisions, whether or not such responsibility would not attach even in absence of such special statute, on the grounds that powers are granted to municipal corporations especially designed to enable them to preserve peace and order, and that it is their duty so to exercise such powers as to afford adequate protection to property against mobs and riots. It cannot be doubted that these principles are the underlying reasons of the statute. But, whatever may be the source of these obligations, it is plain, they do not spring from contract.

"It is suggested, however, that whatever may have been the origin of relator's rights against the city, their judgments, at least, are contracts, and within the protection of this constitutional clause. We are unable to discover any principle upon which

to base such a doctrine. In the early and leading case of *Fletcher v. Peck*, 6 Cranch, p. 136, Chief Justice Marshall, in defining what is meant by the word **contract** as used in this very clause, said: 'A contract is a compact between two or more parties.' In the later case of *Green v. Biddle*, 8 Wh., 92, the word contract, in the same connection, was defined to be 'the agreement of two or more parties to do or not to do certain acts. It thus appears from the decisions of the highest Federal tribunal, that the word 'contract' as used in the Constitution is to be interpreted according to the meaning attached to it, in ordinary language, and under all systems of law.

"We are at a loss to perceive what features of such a contract attach to judgments as such. Far from being agreements or compacts between the parties, they are usually the sequence of violent contests, and are imposed upon the losing party by a higher authority, against his will and protest.

"It has been distinctly held by high authority that 'a judgment is not an agreement, contract, or promise in writing.'

"*Tood v. Crumb*, 5 McLean, 172.

"The Supreme Court of the United States has expressed its opinion upon this question in terms which, though perhaps *obiter*, leave no doubt that the views here expressed by us would receive its sanction. It said: 'It may be doubted whether a judgment not founded upon an agreement, express or implied, is a contract within the meaning of the constitutional prohibition. It is sometimes called by text-writers a contract of record, because it establishes a legal obligation to pay the amount recovered, and, by fiction of law, where there is a legal obligation to pay, a promise to pay is implied. But it is not perceived how this fiction can convert the result of a proceeding not founded upon an agreement,

express or implied, but upon a transaction wanting the assent of the parties, into a contract within the meaning of the clause of the Federal Constitution which forbids any legislation impairing its obligation. The purpose of the constitutional prohibition was the maintenance of good faith in the stipulations of parties against any State interference. If no assent be given to a transaction, no faith is pledged with respect to it, and there would seem, in such case, to be no room for the operation of the prohibition.'

"Garrison v. City, 21 Wall., 203.

"These views are in harmony with the reasons and principles underlying the constitutional provision referred to, and we have no hesitation in adopting them.

"See also, Forsyth v. Marbury, R. M. Charl., 324.

"Second. It is next contended that this restriction in the Constitution of 1879, *quoad* the right of relators, violates that provision of the 14th Amendment of the Constitution of the United States forbidding the State 'to deprive any person of life, liberty or property without due process of law.'

"It cannot be, nor to our knowledge has it ever been, contended that this provision is the equivalent, in meaning and effect, of these provisions so common in State Constitutions which forbade the passage of laws, divesting divested rights.

"It is not necessary for us to refer to the many limitations which were imposed by judicial interpretation upon the terms 'vested rights,' even under those express provisions. The 14th Amendment, by its very terms, refers only to 'property' and no 'vested rights' can be included within that term, by any stretch of interpretation except 'vested rights' in and to 'property.' Giving to the word 'property' its broadest signification, so as to include

everything susceptible of ownership, movable or immovable, corporeal or incorporeal, in cannot possibly be extended to remedies given merely for the enforcement of property rights. Still less can the power of taxation of a municipal corporation be a subject of ownership by any individual, in such sense, that the diminution or taking away thereof by the competent power can be considered as depriving him of his property.

"The decisions bringing remedies, to a certain extent within the operation of the Federal prohibition of laws impairing the obligation of contracts, by no means recognize any rights of property therein, but rest upon the very different principle laid down in the leading case of *Ogden v. Saunders*, 12 Wheaton, 213, that 'parties must be understood as making their contract with reference to existing laws, and impliedly assenting that such contracts are to be construed, governed and controlled by such laws.'

"We have thus carefully examined every ground upon which the relators herein can possibly claim that their right to the remedy herein invoked is protected from the operation of the adverse provision of the State Constitution.

"We shall always be found ready to yield, and to enforce obedience to the requirements of the Federal Constitution; but, where those requirements are not violated, we must, as mandataries of the State, recognize her Constitution as our sole procuration, defining and limiting our powers, and we can neither do, nor direct to be done, nor permit to be done, anything in violation of the provisions thereof.

"It is, perhaps, superfluous to say that the rights of contract creditors will be passed upon only when presented for our adjudication."

In the case of *State ex rel. Collins v. Burke, Treasurer*, 32 La. An., 1218, the *Folsom* case was re-affirmed, with the statement:

"They, therefore, are subject to the provisions of the ordinance. However hard may be the case of relator, in having his vested rights in those funds thus destroyed, the sovereign authority of the State has so decreed, and he must submit."

In the case of *Meyers v. Mitchell*, 20 La. An., 534, quoted *supra*, the court said:

"Even if a vested right exists, as claimed (which we are by no means ready to admit) it may have been lawfully taken away by a new constitution, provided the obligations of a contract were not impaired.

"A prohibition which would control the people of the State in this regard, if in existence would be found in the Constitution of the United States, but that instrument will be searched in vain for any such limitation on the popular will.

"A state constitution may be retrospective in its operation, and may divest vested rights, yet if it does not impair the obligation of a contract or partake of the character of an *ex post facto* law, it will not contravene the Constitution of the United States. *Satterlee v. Matthewson*, 2 Peters, 380; *Charles River Bridge v. Warren Bridge*, 11 Peters, 420."

the case of *State ex rel. Newgass v. New Orleans*, 38 Ann., 121, the court said:

"No principle is better recognized by law and jurisprudence than that he who receives what is not due to him, whether he receives it through error or knowingly, obliges himself to restore it to him from whom he has unduly received it, and that he

who has thus paid through mistake, believing himself a debtor, may reclaim what he has paid. *R. C. C.*, 2301-2.

"This principle governs both natural and artificial persons.

"It does not, however, follow that the right to claim reimbursement and the obligation to refund arise from a contract, express or implied, which is protected from impairment or invasion by the Constitution of the United States, which is invoked as a shield in the present controversy.

"The contracts designed to be protected are such by which perfect rights, certain, definite, fixed private rights, are vested. *Butler v. Penn.*, 10 How., 402.

"There is a distinction between those rights which the law gives to, or obligation which it imposes upon, persons in certain relations, merely in carrying out its own views of policy and independently of any stipulations which the parties may have made, and those rights which the law itself, even in carrying out some matter of general policy, authorizes to be made the subject of express contract between the parties.

"In the former case, the rights being entirely derived from the law and not from the contract, laws changing them are not within the prohibition; but, in the latter case, although the law authorized the rights to be acquired, yet it authorized them to be acquired only by contract and when thus acquired the contract is within the pale of the protection.

"The doctrine of implied municipal liability,' says Mr. Chief Justice Field, in a California case, invoked by relator and which was subjected to a thorough examination,' applies to cases where money or other property of a party is received under such circumstances that the general law, independent of

express contract, imposes the obligation upon the city to do justice with respect to the same.

"If the city obtain money by mistake, or without authority, of law, it is her duty to refund it *not from any contract*, entered into by her on the subject, but from the general obligation to do justice, which binds all persons, whether natural or artificial, etc. (The italics are ours.)

"The obligation to refund the money illegally received by the city, for the licenses subsequently declared to be illegal, does not arise from any contract between the city and the parties paying, any more than does the obligation to repair damage caused by the fault of another.

"In the case of *Folsom v. New Orleans*, 32 An., 714, decided by the present Court, whose conclusions were affirmed by the Supreme Court of the United States, we had occasion to review fully the principles and the jurisprudence on the question of the protection which the Federal Constitution awards to contracts by prohibiting States from impairing the obligations of the same, and following in the line of well-established precedents, we held that the right to claim damages, occasioned by the commission of a tort, even when reduced to judgment, did not arise from a contract and was not, therefore, within the constitutional protection.

"We further declared that a State Constitution, when it does not conflict with that of the United States, is omnipotent in its disposition and even destruction of private and social rights, and that a State may divest vested rights, without infringing the paramount law of the land.

"It is manifest in the case at bar, that as the right to claim reimbursement does not arise from any contract, but is recognized by law only, the relator has vainly invoked the constitutional protection." 38 La. An., 121-122.

The power of the sovereign State of Louisiana to Legislate, with reference to its own affairs, is exactly commensurate with the power of Congress to legislate for the territories of the United States. In each case, the only limit on the power is found in the Federal Constitution, and both Congress and the sovereign States have the right to validate retrospectively anything they might have authorized in advance.

We have a perfect analogue for this case, in *United States v. Heinszen & Co.*, 206 U. S., 1100. The court said:

"After the Philippine Islands came under the military control of the United States, the President, on July 12, 1898, issued an order providing for the enforcement by the military power in those islands of a system of tariff duties. This order, promulgated by the Secretary of War, was accompanied with an enumeration of the tariff proposed, and regulations for the collection of the same. However, for causes which need not be referred to, the tariff in question was subsequently modified, and did not go into operation until November, 1898.

"The duties imposed by this tariff were levied on goods coming into the Philippine Islands, whether from the United States or other countries. This tariff was in force when the treaty of peace (30 Stat. at L., 1754) was signed (December 10, 1898) when the treaty was ratified (April 11, 1899) and was continued by the Philippine Commission appointed by the President in April, 1900. Indeed, the civil government, as established in the islands by the President, either in virtue of his inherent authority or as a result of the power recognized and con-

ferred by the Act of Congress approved March 2, 1901 (*31 Stat. at L., 910, Chap. 803*), continued the original tariff in force, except to some modifications not material to be noticed, and formulated its provisions in the shape of a legislative act entitled 'An Act to Revise and Amend the Tariff Laws of the Philippine Archipelago.' And this tariff was in force in March, 1902, when it was expressly approved and continued by Congress. (*32 Stat. at L., 54, chap. 140, U. S., Comp. Stat. Supp., 1905, p. 388.*)

"In May, 1901, the cases of *De Lima v. Bidwell* and *Dooley v. United States* were by this Court decided. *182 U. S., 1,222, 45 L. Ed., 1041, 1074, 21 Sup. Ct. Rep., 743, 762.* The first case involved the right to recover duties paid under protest to the collector of the Port of New York upon sugar brought into the United States from the Island of Porto Rico during the autumn of 1899, and subsequent to the cession of the island. The second case involved the right to recover the amount of certain duties on goods carried into Porto Rico from the United States between July 6, 1898, and May 1, 1900, the duties in question having been levied by authority of the general command of the army of occupation or subsequently by order of the President as commander in chief. In the first case (*De Lima v. Bidwell*) it was decided that, as the effect of the ratification of the treaty was to take the Island of Porto Rico out of the category of foreign territory, within the meaning of that word as used in existing tariff laws of the United States, no right remained to enforce against goods coming from Porto Rico into the United States, the previously enacted tariff of duties, although, considering the terms of the treaty and the relation of the island to the United States, Congress had power to impose a tariff on goods coming from that island into the United States. As a

corollary of the doctrine announced in *De Lima v. Bidwell*, in the second case (*Dooley v. United States*) it was held that whilst the President, as commander in chief, had authority to impose tariff duties in Porto Rico on goods coming into that country from the United States prior to the ratification of the treaty, no such executive power existed after that ratification. It was consequently held that none of the duties paid prior to the ratification of the treaty could be recovered, whilst those paid subsequently could be.

"In the following year (December 2, 1901) another case, entitled *Dooley v. United States*, was decided. 183 U. S. 151, 46 L. Ed., 128, 22 Sup. Ct. Rep., 62. That case involved the validity of tariff duties levied in Porto Rico on goods brought into that island from the United States, the duties in question having been imposed after the ratification of the treaty, and in and by virtue of the act of Congress known as the Foraker act. Applying the principles announced in the previous cases just referred to, it was held that the duties were lawful because, although collected after the ratification, they were imposed not simply by virtue of the authority of the President, acting under the military power, but in conformity to a valid act of Congress.

"And on the same day with the foregoing the case of *Fourteen Diamond Rings v. United States* (The Diamond Rings) was decided. 183 U. S., 176, 46 L. Ed., 138, 22 Sup., Ct. Rep., 59. That case involved the validity of tariff duties levied on diamond rings brought from the Philippine Islands into the United States. Adhering to the doctrines settled by the prior rulings, it was held that, as the Philippine Islands, by the ratification of the treaty, had ceased to be foreign within the meaning of the tariff laws, the imposition of the duties complained

of was unlawful. In the course of the opinion the effect of the treaty as applied in the previous cases to Porto Rico was pointed out, and the status of the Philippine Islands in virtue of the treaty was, in effect, held to be controlled by the former decisions.

"In April, 1905, the two cases of *Lincoln v. United States* and *Warner, B. & Co. v. United States* were by this Court decided. 197 U. S., 419, 49 L. Ed., 816, 25 Sup. Ct. Rep., 455. The cases came here, one on error to the District Court of the United States for the southern district of New York, and the other by appeal from the Court of Claims. The one (*Lincoln case*) was commenced on March 29, 1902; the other (*Warner, B. & Co. case*) on January 17, 1902. In both cases recovery from the United States was sought of the amount of duty paid upon goods taken from the United States into the Philippine Islands after the ratification of the treaty with Spain, and before the passage of the act of Congress of March 3, 1902. Reversing the judgments which had been rendered below in both cases in favor of the United States, it was declared that there was nothing in the situation of the Philippine Islands which took that territory out of the reach of the doctrine announced in the previous cases which we have reviewed, and it was, therefore, decided that the President was without power, after the ratification of the treaty, in the absence of express authority from Congress, to impose the tariff duties in question. A contention on the part of the United States that Congress, by the 2nd section of the act approved July 1, 1902, (entitled 'An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippine Islands, and for Other Purposes') (32 Stat. at L., 691, chap. 1369), had ratified the action of the President in imposing and collecting the

duties in controversy, therefore no recovery could be had, was held to be unfounded, for grounds stated in the opinion, to which we shall hereafter advert. The case was heard upon rehearing, and in a decision announced on May 28, 1906, the views previously entertained by the Court were reiterated and adhered to. 202 U. S., 484, 50 L. Ed., 1117, 26 Sup. Ct. Rep., 728. In the month following (June, 1906) Congress passed an act containing a provision which reads as follows (34 Stat. at L., 636, chap. 3912):

"That the tariff duties, both import and export, imposed by the authorities of the United States or of the provisional military government thereof in the Philippine Islands prior to March eight, nineteen hundred and two, at all ports and places in said islands, upon all goods, wares, and merchandise imported into said islands from the United States, or from foreign countries, or exported from said islands, are hereby legalized and ratified, and the collection of all such duties prior to March eight, nineteen hundred and two, is hereby legalized and ratified and confirmed as fully as to all intents and purposes as if the same had, by prior act of Congress been specifically authorized and directed."

"Now this case was commenced after the decision in the *Fourteen Diamond Rings* to recover the amount of tariff duties exacted in the Philippine Islands on merchandise brought from the United States, the duties having been collected under the authority of the order of the President after the ratification of the treaty, but before the time when Congress, by Section 1 of the Act of March 8, 1902, had enacted tariff duties for the Philippine Islands. The case was pending in the Court of Claims when the *Lincoln and Warner, B. & Co.* cases were decided by this court. It was found by the court below that the military officers of the United States

collected the duties and paid over the amount thereof to the Treasurer of the Philippine Islands, and that the money was disbursed for the expenses of that government without going into the Treasury of the United States. Considering that the original illegality of the duties complained of was established by the previous decisions of this court, and that the act of Congress of June 30, 1906, ratifying the collection of duties, was beyond the power of Congress to enact, the court below rendered judgment against the United States for the amount of duties paid. *Ct. Cl.*

"Applying the doctrine settled by this court in the cases to which we have referred, concerning the power to levy tariff duties under the authority of the President, on goods taken from the United States into Porto Rico and the Philippine Islands, or brought into the United States from either of such countries subsequent to the ratification of the treaty, and prior to the levy by Congress of tariff duties, it is obvious that the court below correctly held that such tariff exactions were illegal. It follows, therefore, that the only question open for consideration is whether the court below erred in refusing to give effect to the act of Congress of June 30, 1906, which ratified the collection of the duties levied under the order of the President.

"As the text of the act of Congress is unambiguous, and manifests, as explicitly as can be done, the purpose of Congress to ratify, the case comes to the simple question whether Congress possessed the power to ratify which it assumed to exercise. When controversy is thus reduced to its ultimate issue we think the error committed by the court below, both in reason and authority, is readily demonstrable.

"That where an agent, without precedent authority, has exercised, in the name of a principle, a

power which the principal had the capacity to bestow, the principal may ratify and affirm the unauthorized act, and thus retroactively give it validity when rights of third persons have not intervened, is so elementary as to need but statement. That the power of ratification as to matters within their authority may be exercised by Congress, state governments, or municipal corporations, is also elementary. We shall not stop to review the whole subject, or cite the numerous cases contained in the books dealing with the matter, but content ourselves with referring to two cases as to the power of Congress, which are apposite and illustrative. In *Hamilton v. Dillin*, 21 Wall., 73, 22 L. Ed., 528, the facts were as follows: During the Civil War the Secretary of the Treasury, with the sanction of the President, adopted rules and regulations for granting permits to trade between the belligerent lines. One of these rules exacted the payment of a contribution, styled a fee, of 4 cents a pound on cotton purchased. Hamilton, having taken a permit and paid Dillin, surveyor of the Port of Nashville, Tennessee, under the regulations, a sum of money for a permit to trade in cotton, sued to recover the same as having been illegally exacted. In deciding the case (p. 88, L. Ed., p. 531) the court came to consider whether 'the action of the Executive was authorized, or, if not originally authorized, was confirmed by Congress.' Both these questions were determined in the affirmative. When the Court came to consider the legislation relied upon as having confirmed the acts of the President in establishing the regulations in question, after stating the same, the court declared: "We are also of opinion that the Act of July 2, 1864 (13 Stat. at L., 375, chap. 225), recognized and confirmed the regulations in question." *Mattingly v. District of Columbia*, 97 U. S., 687, 24 L. Ed., 1098, con-

cerned the validity of an act of Congress in effect confirming the doings of the Board of Public Works of the District of Columbia touching the improvements of streets and roads, and ratifying certain void assessments of street improvements. The court said (*p. 690, L. Ed., p. 1099*):

"We do not propose to inquire whether the charges of the bill are well founded. Such an inquiry can have no bearing upon the case as it now stands; for were it conceded that the Board of Public Works had no authority to do the work that was done at the time when it was done, and consequently no authority to make an assessment of a part of its costs upon the complainants' property, or to assess in the manner in which the assessment was made, the concession would not dispose of the case, or establish that the complainants have a right to the equitable relief for which they pray. There has been congressional legislation since 1872, the effect of which upon the assessments is controlling. There were also acts of the legislative assembly of the District, which very forcibly imply a confirmation of the acts and assessments of the board of which the bill complains. If Congress or the legislative assembly had the power to commit to the board the duty of making the improvements, and (the power) to prescribe that the assessments should be made in the manner in which they were made, it had power to ratify the acts which it might have authorized. And the ratification, if made, was equivalent to an original authority, according to the maxim, *Omnis rati-habitio retrotrahitur et mandato priori eaequiparatur*. Under the Constitution Congress had power to exercise exclusive legislation in all cases whatsoever over the District, and this includes the power of taxation. *Cohen v. Virginia*, 6 *Wheat*, 264, 5 *L. Ed.*, 257. Congress may legislate within the District, respect-

ing the people and property therein, as may the legislature of any state over any of its subordinate municipalities. It may therefore cure irregularities, and confirm proceedings which, without the confirmation, would be void. because unauthorized, provided such confirmation does not interfere with intervening rights.'

"It is then evident, speaking generally, both on principle and authority, that Congress had the power to pass the ratifying act of June 30, 1906, and that that act bars the plaintiff's right to recover, unless, by the application of some exception, this case is taken out of the operation of the general rule. And this brings us to consider the several propositions relied upon at bar to establish that such is the case.

"First. Whilst it is admitted that Congress had the power to levy tariff duties on goods coming into the United States from the Philippine Islands or coming into such islands from the United States after the ratification of the treaty, it is yet urged that, as that body was without authority to delegate to the President the legislative power of prescribing a tariff of duties, it hence could not, by ratification, make valid the exercise by the President of a legislative authority which could not have been delegated to him in the first instance. But the premise upon which this proposition rests presupposes that Congress, in dealing with the Philippine Islands, may not, growing out of the relation of those islands to the United States, delegate legislative authority to such agencies as it may select—a proposition which is not now open for discussion. *Dorr v. United States*, 195 U. S., 138, 49 L. Ed., 128, 24 Sup. Ct. Rep., 808.

"Second. As the duties collected were illegal, it is insisted that, for the purpose of testing the validity of the act of Congress, the fact of such collection

must be put out of view, and the act ratifying the exaction must be treated as if it were solely an original exercise by Congress of the taxing power. This being done, it is said, reduces the case to the inquiry, had Congress power, years after goods which were entitled to free entry had been brought into the Philippine Islands, to retroactively impose tariff duties upon the consummated act of bringing the goods into that country? But the proposition begs the question for decision, by shutting out from view the potential fact that when the goods were brought into the Philippine Islands there was a tariff in existence under which duties were exacted in the name of the United States. Indeed, the contention goes further even than this, since it entirely disregards the important consideration that, although the duties were illegally exacted, the illegality was not the result of an inherent want of power in the United States to have authorized the imposition of the duties, but simply arose from the failure to delegate to the official the authority essential to give immediate validity to his conduct in enforcing the payment of the duties. And when these misconceptions are borne in mind it results that the unsoundness of the proposition relied upon is demonstrated by the application of the elementary principle of ratification to which we have previously referred. Moreover, the fallacy which the proposition involves becomes yet more obvious when it is observed that the contention cannot even be formulated without misstating the nature of the act of Congress; in other words, without treating that act as retrospective legislation enacting a tariff, when, on its very face, the act is but an exercise of the conceded power dependent upon the law of agency to ratify an act done on behalf of the United States, which the United States could have originally authorized.

"Third. It is urged that the ratifying statute cannot be given effect without violating the 5th Amendment to the Constitution, since to give efficacy to the act would deprive the claimants of their property without due process of law, or would appropriate the same for public use without just compensation. This rests upon these two contentions: It is said that the money paid to discharge the illegally exacted duties after payment, as before, 'justly and equitably belonged' to the claimants, and that the title thereto continued in them as a vested right of property. It is consequently insisted that the right to recover the money could not be taken away without violating the 5th Amendment, as stated. But, here, again the argument disregards the fact that when the duties were illegally exacted in the name of the United States, Congress possessed the power to have authorized their imposition in the mode in which they were enforced, and hence, from the very moment of collection, a right in Congress to ratify the transaction, if it saw fit to do so, was engendered. In other words, as a necessary result of the power to ratify, it followed that the right to recover the duties in question was subject to the exercise by Congress of its undoubted power to ratify. To hold to the contrary would be to say that whilst the unauthorized act of an officer done on behalf of the United States was subject to ratification by the United States, yet, if the officer acted without authority, the act, when performed, annihilated the power to ratify; that is, that the very condition which engendered the power to destroy it.

"But if it be conceded that the claim to a return to the monies paid in discharge of the exacted duties was, in a sense, a vested right, it in principle, as we have already observed, would be but the character of right referred to by Kent in his Commem-

taries, where, in treating of the validity of statutes retroactively operating on certain classes of rights, it is said (*Vol. 2, pp. 415, 416*):

"The legal rights affected in those cases by the statutes were deemed to have been vested subject to the equity existing against them, and which the statutes recognized and enforced. *Goshen v. Sontington*, 4 Conn., 209, 10 Am. Dec., 121; *Wilkinson v. Leland*, 2 Pet., 627, 7 L. Ed., 542; *Langdon v. Strong*, 9 Vt., 234; *Watson v. Mercer*, 8 Pet., 88, 8 L. Ed., 876; 3 Story, Const., 267.'

"Nor does the mere fact that, at the time the ratifying statute was enacted, this action was pending for the recovery of the sums paid, cause the statute to be repugnant to the Constitution. The mere commencement of the suit did not change the nature of the right. Hence again, if it be conceded that the capacity to prosecute the pending suit to judgment was, in a sense, a vested right, certainly also the power of the United States to ratify was, to say the least, a right of as high a character. To arrogate to themselves the authority to divest the right of the United States to ratify is, then, in reason, the assumption upon which the asserted right of the claimants to recover must rest.

"Considering how far the bringing of actions would operate to deprive government of the power to enact curative statutes which, if the actions had not been brought, would have been unquestionably valid, Cooley, in his *Constitutional Limitations*, says (7th Edition, p. 543):

"Nor is it important, in any of the cases to which we have referred, that the legislative act which cures the irregularity or defect, or want of original authority, was passed after suit brought, in which such irregularity or defect became matter of importance. The bringing of suit vests in the party no right to a

particular decision. (*Bacon v. Callender*, 6 Mass., 303; *Butler v. Palmer*, 1 Hill., 324; *Cowgill v. Long*, 15 Ill., 202; *Miller v. Graham*, 10 Ohio St., 1; *State v. Squires*, 26 Iowa, 340; *Patterson v. Philbrook*, 9 Mass., 151); and his case must be determined on the law as it stands not when the suit was brought, but when the judgment is rendered. *Watson v. Mercer*, 8 Pet., 88, 8 L. Ed., 876; *Mather v. Chapman*, 6 Conn., 54; *People ex rel. Bristol v. Ingham County*, 20 Mich., 95; *Satterlee v. Matthewson*, 16 Serg. & R. 169, and 2 Pet., 380, 7 L. Ed., 458; *Excelsior Mfg. Co. v. Keyser*, 62 Miss., 155; *Pheonix Ins. Co. v. Pollard*, 63 Miss., 61; *McLane v. Bonn*, 70 Iowa, 752, 30 N. W., 478; *Johnson v. Richardson*, 44 Ark., 365).

"And the following cases, in various forms illustrate the application of the principle; *United States v. Morris*, 10 Wheat., 246, 6 L. Ed., 314; *Grim. v. Weissenberg School District*, 57 Pa., 433, 438, 98 Am. Dec., 237; *Chester v. Black*, 132 Pa., 568, 6 L. R. A., 302, 19 Atl., 276; *Price v. Huey*, 22 Ind., 18; *Welch v. Wadsworth*, 30 Conn., 149, 158, 79 Am. Dec., 236; *Rich v. Flanders*, 39 N. H., 310, 311; *Iowa R. Land Co. v. Soper*, 39 Iowa, 112, 119; *Ferry v. Campbell*, 110 Iowa, 290, 50 L. R. A., 92, 81 N. W., 604; *Mills v. Geer*, 111 Ga., 275, 279, 287, 288, 52 L. R. A., 934, 36 S. E., 673.

"Fourth. Aside, however, from principle and the general result of the adjudged cases, it is finally insisted that the want of power in Congress to ratify the collection of the duties in question under the circumstances here disclosed conclusively results from the decision in *De Lima v. Bidwell*, 182 U. S., 1, 45 L. Ed., 1041, 21 Sup. Ct. Rep., 743. As we have seen, that the case concerned the validity of collection of duties in the port of New York on goods brought into the United States from Porto Rico, and, whilst insisting on the legality of the duties, the govern-

ment, at the same time, urged that, even if originally invalid, they had yet been ratified as the result of provisions of a specified act of Congress which had been passed after the suit to recover the duties had been commenced. As that portion of the duties sued for which had been collected after ratification of the treaty were decided to be illegal, it followed that a decision as to the question of ratification was required. In passing upon the subject, after intimating doubt as to whether the act relied upon, as manifesting the intention of Congress to ratify, was intended to have that effect, it was remarked (p. 199, *L. E.*, 1057, *Sup. Ct. Rep.*, 754):

"It can clearly have no retroactive effect as to money theretofore paid under protest, for which an action to recover back had already been brought. As the action in this case was brought March 13, 1900, eleven days before the act was passed, the right to recover the money sued for could not be taken away by a subsequent act of Congress. Plaintiffs sue in assumpsit for money which the collector has in his hands, justly and equitably belonging to them. To say that Congress could, by a subsequent act, deprive them of the right to prosecute this action, would be beyond its power. In any event, it should not be interpreted so as to make it retroactive. *Kennett's Petition*, 24 N. H., 139; *Alter's Appeal*, 6 Pa., 341; 5 Am. Rep., 433; *Norman v. Heist*, 5 Watts & S., 171, 40 Am. Dec., 493; *Donovan v. Pitcher*, 53 Ala., 411, 25 Am. Dec., 634; *Palairot's Appeal*, 67 Pa., 479; 5 Am. Rep., 450; *State use of Methodist Episcopal Church v. Warren*, 28 Md., 338."

"Now, considering the language just quoted in connection with the doubt expressed as to the import of the alleged ratifying statute, it results that the reasoning employed stated two considerations: First, the want of power in Congress to ratify after suit

brought; second, the duty of construing the statute relied upon so as not to produce ratification, in view of its ambiguity. As the question of construction was last stated and that question was declared to be 'in any event' decisive, we think the observations made concerning the want of power to ratify after suit brought must be regarded as not having been necessary to the decision rendered, and therefore must be treated as *obiter*. And this interpretation was, we think, applied in the cases of *Lincoln v. United States and Warner, B. & Co. v. United States*, 197 U. S., 419, 49 L. Ed., 816, 25 Sup. Ct. Rep., 455. In those cases, as we have said, one of the defenses insisted upon by the Government was a ratification alleged to have been operated by the act of Congress of July 1, 1902, which was passed after the bringing of the actions to recover. It is patent, on the face of the opinion announced on the original hearing that the decision was exclusively based upon the ground that the act of Congress was so ambiguous concerning the ratification relied upon that it should not be implied that such ratification was contemplated. And it is to be observed that *De Lima v. Bidwell* was not overlooked, since that case was referred to in the course of the opinion. On the rehearing the case was argued on questions submitted by the Court, viz., whether the act relied upon manifested the purpose to, ratify, and, if it did, whether Congress had power so to do. In the opinion on the re-hearing, while the Court reiterated the views previously expressed, that the act could not be treated as ratifying the collection of the duties sought to be recovered, because of its ambiguity in that regard, yet it expressly recognized the power in Congress to ratify, and in effect declared that, as to those things to which the alleged ratifying act clearly applied, ratification had resulted. This is

so, since the course of the opinion, in answering the argument that the alleged ratifying statute would be meaningless unless it was held applicable to the particular duties in controversy, it was pointed out (202 U. S., p. 499, 50 L. Ed., 1119, 26 Sup. Ct. Rep., p. 730) that there were duties which had been levied and collected other than those in controversy, to which the act clearly applied, and 'that question (as to them) was put at rest by this ratification.' Further, in calling attention to the ambiguity in the ratifying statute relied upon and the resulting doubt whether it embraced all duties, it was pointed out that the fact that actions were pending at the time of the passage of the ratifying act lent cogency to the view that, if Congress had intended by the ratification to effect them, it would have explicitly so declared. On this subject the court said, p. 498, L. Ed., p. 1119, Sup. Ct. Rep. p. 730):

"This construction is favored by the consideration that the suits had been begun when the act of July 1, 1902, was passed, and that, even if Congress could deprive plaintiffs of their vested rights in process of being asserted (*Hamilton v. Dillin*, 21 Wall., 73, 22 L. Ed., 528), still it is not to be presumed to do so on language which, literally taken, has a narrower sense.'

"Certainly, this language, particularly in view of the reference made to *Hamilton v. Dillin*, is wholly incompatible with the conception that the observation as to pending actions made in *De Lima v. Bidwell* was to be taken as having settled the proposition that a power to ratify which otherwise obtained could not be exerted after suit brought.

"Be this as it may, however, as, after deliberate consideration, we are of opinion that the mere bringing of this action did not deprive Congress of its power to ratify the collections made by its officers, in

the name of the United States, of the moneys sought to be recovered in this action, we may not allow the remarks made in *De Lima v. Bidwell*, under the circumstances stated, to control our judgment.' " 206 U. S., 1100-1106.

The case of *Utter v. Franklin*, 172 U. S., 416, was one where the Territory of Arizona had issued bonds in aid of a railroad, without any power or authority in the legislature, and the bonds had been declared invalid by a decision of the United States Supreme Court. Subsequently, Congress passed an act validating the bonds, after which the holder of some bonds presented a petition for a mandamus to compel the Governor, Auditor and Secretary of the Territory, acting as Loan Commissioners, to issue certain bonds in exchange for the bonds that had been previously issued in aid of the railroad and pronounced invalid by the courts. In deciding the case, the court said:

"This is the act upon which the relators place their chief reliance. Its evident purpose was to authorize the funding of all outstanding bonds of the Territory, and its municipalities, which had been authorized by legislative enactments, whether lawful or not, provided such bonds had been 'sold or exchanged in good faith, and in compliance with the terms of the act of the legislature by which they were authorized.'

"The second section deals with the original bonds which had not been theretofore funded, and provides that all such as had been theretofore issued under the authority of the Legislature, and which by the **first section** were authorized to be funded, should be confirmed, approved and validated, and might be funded until January 1, 1897.

"We think it was within the power of Congress to validate these bonds. Their only defect was that they had been issued in excess of the powers conferred upon the territorial municipalities by the act of June 8, 1878. There was nothing at that time to have prevented Congress from authorizing such municipalities to issue bonds in aid of railways, and that which Congress could have originally authorized it might subsequently confirm and ratify. This Court has repeatedly held that Congress has full legislative power over the territories, as full as that which the state legislature has over its municipal corporations. *American Insurance Co. v. Canter*, 1 Pet., 511; *National Bank v. Yankton Co.*, 101 U. S., 129.

"Curative statutes of this kind are by no means unknown in Federal legislation. Thus, in *National Bank v. Yankton County*, *supra*, this court sustained an act of Congress nullifying a legislative act of the Territory of Dakota authorizing the issue of railway bonds, but validating action theretofore taken by the county voting subscription to a certain railroad company, holding it to be, 'equivalent to a direct grant of power by Congress to the County to issue the bonds in dispute.' In *Thompson v. Perine*, 103 U. S., 806, we also sustained a similar act of the State of New York, ratifying and confirming the act of commissioners in issuing similar bonds. In *Read v. Plattsburgh*, 107 U. S., 568, a similar ruling was made with regard to an act of the legislature of Nebraska validating an issue of bonds by the City of Plattsburgh, for the purpose of raising money to construct a high school building. See, also, *New Orleans v. Clark*, 95 U. S., 644; *Grenada County v. Brogden*, 112 U. S., 261; *Otoe County v. Baldwin*, 111 U. S., 1; 1 *Dillon Municipal Corporations*, Sec. 544; *Cooley's Const. Lim.*, 6 Ed., 456; *Bol-*

les v. Brimfield, 120 U. S., 759; *Anderson v. Santa Anna*, 116 U. S., 356; *Dentzel v. Woldie*, 30 Cal., 138-145.

"The fact that this court had held the original Pima County bonds invalid does not affect the question. They were invalid, because there was no power to issue them. They were made valid by such power being subsequently given, and it makes no possible difference that they had been declared to be void under the power originally given. The judgment in that case was *res adjudicata* only of the issues then presented, of the facts as they then appeared, and of the legislation then existing." 172 U. S., 423, 424.

In the case of *Anderson v. Santa Anna*, 116 U. S., 359, the court said:

"The record does not disclose the particular ground upon which the Supreme Court sustained the demurrer, and gave judgment for the township. But we cannot understand how that result was possible, except upon the hypothesis that the Act of February 28, 1867, legalizing elections previously held, at which a majority of legal voters of a township declared in favor of a subscription to the stock of this company, was unconstitutional. But the constitutionality of that very statute, in respect to the clause now before us, was directly sustained by this Court in *St. Joseph Township v. Rogers*, 16 Wall., 644-663. The question there was as to the validity of bonds issued by a township on the first of October, 1867, to the Danville, Urbana, Bloomington, Pekin Railroad Company, under the authority of the before-mentioned Act of February 28, 1867, and in accordance with a popular vote at an election held in August, 1866. It was there contended that the act

was unconstitutional and void, as creating a debt for a municipality, against its will expressed in a legal manner. There, as here, the election referred to in the bonds was held without authority of law. But the court, speaking by Mr. Justice Clifford, said, that, according to decisions of the Supreme Court of Illinois and of this court defective subscriptions of the kind there made 'may, in all cases, be ratified where the legislature could have originally conferred the power'—citing, among other cases, *Cowgill v. Long*, 15 Ill., 202, and *Keithsburg v. Frick*, 34 Ill., 405." 116 U. S., 359.

In the case of *Beloit v. Morgan*, 7 Wall., 623-624, the court said:

"In the point to be considered is the effect of this provision. That is not an open question in this court. Whenever it has been presented, the ruling has been that, in cases of bonds issued by municipal corporations, under a statute upon the subject ratification by the legislature is in all respects equivalent to original authority, and cures all defects of power, if such defects existed, and all irregularities in its execution. The same principle has been applied in the courts of the state. This court has repeatedly recognized the validity of private and curative statutes, and given them full effect, where the interests of private individuals were alone concerned, and were largely involved or affected. The earlier and more important of these authorities are so well known to the profession and are often referred to, that it would be waste of time to comment upon them. We held this objection also fatal to the appellant's case." 7 Wall., 623-624.

In *Richie v. Franklin County*, 22 Wall., 76, the court said:

"Thus it will be seen the legislature intended to cure past errors, but left no room for future ones. In this way, it was enabled to relieve the hardship caused by the construction placed on the imperfect language of a former legislature, and at the same time to put an end to expenditures like those made by Franklin County, unless a majority of the voters should approve of them. In many cases retroactive laws, although intended to effect a good purpose, have features of injustice about them. This is not that case. The bonds here were issued under a supposed authority, and no one interposed an objection. The taxpayers rested until the mischief was done, and then tried to get relief. It is certainly not unjust to them that the legislature should say, 'you must pay for an expenditure which you saw incurred and could have prevented, but did not.' If the county court had acted wholly outside of its duties, the aspect of the case might have been different. But the most that can be said is that the court mistook the nature of the powers conferred upon it, and that this mistake would never have occurred, if the legislature had used language appropriate to the purpose." 22 Wall., 76.

See, also, *Granada Supervisor v. Brogden*, 112 U. S., 271; *Campbell v. City of Kenosha*, 5 Wall., 203; *Nat'l Bank v. Guthrie*, 173 U. S., 537; *Reid v. Plattsmouth*, 107 U. S., 575; *Mattingly v. District of Columbia*, 97 U. S., 692; *Thompson v. Perrine*, 103 U. S., 814; *City v. Lamson*, 9 Wall., 485.

It is submitted:

First: That if Plaintiff in Error has a case, arising under the Fourteenth Amendment to the Constitution of the United States, it has the right to prosecute same in the

United States District Court and is not cut off from the enforcement of any vested rights it might have by the validating paragraph of Article 281 of the State Constitution.

Second. That Plaintiff in Error is without interest to urge the unconstitutionality of said paragraph of Article 281 of the State Constitution, because it might deprive others of their vested rights.

Third. That as the right of Plaintiff in Error to try its case in the State Courts came into being, subject to the right of the sovereign State to abolish all of its Courts, plaintiff has shown no right protected by the Constitution of the United States.

Fourth. That if plaintiff's right to object to the enforcement of a local assessment to pay for the system of drainage provided by the governing authority of the Bayou Terre-aux-Boeufs Drainage District, a subdivision of the State of Louisiana, because that subdivision of the State was without power, prior to the adoption of the validating paragraph of Article 281 of the State Constitution, is a vested right, it came into existence, subject to the right of the sovereign to validate, and is, in no sense, protected by the Fourteenth Amendment to the Federal Constitution.

Fifth. That the State Constitution of Louisiana representing the sovereign will of the people, especially after having been submitted to and ratified by direct vote of the people, is the ultimate expression of the will of the sovereignty itself. Its provisions may control, with plenary power, all private and social rights, and all existing laws and institutions, and may even violate the most fundamental rules of justice, provided only it does not conflict with the provisions of the Constitution of the United States.

Therefore, the judgment of the Supreme Court of Louisiana is correct, and should be affirmed.

II.

If, however, your Honors should determine that the validating clause of Article 281 of the State Constitution does violate the Fourteenth Amendment to the Constitution of the United States, as the case has been fully tried on the merits in the District Court and all evidence that it is possible to adduce has been offered and brought up to this court in the printed record, and as the case only presents questions arising under the Constitution of the United States, we submit that the ends of justice would be best subserved by this court taking the whole case, and rendering a decision that will put at rest forever the validity of the bonds in contest, all of which have been sold to the public and are to-day widely distributed.

The trial judge has rendered very elaborate reasons for his conclusion that the bonds were valid. Those reasons will be found in the printed record, pp. 53-65, and we adopt them as part of our argument:

"The evidence shows that the Bayou Terre-aux-Boeufs Drainage District was created, in accordance with law, in 1906, and that the area embraced within its limits was comprised of both high land, susceptible of being drained by gravity, and swamp or marsh land, the surface of which was practically at mean tide level, which was not susceptible of being drained by gravity, but could only be drained by levees and pumps. After the organization of the board of commissioners of the drainage district, the board of commissioners, with the assistance of the Board of State Engineers

and its own special engineer, adopted a general system of levees and canals to serve the entire district, the canals being intended to drain the high land by gravity, and also to afford outlets into which the water from the land not susceptible of being drained by gravity could be pumped, and the levees, which were to be constructed of excavation from the canals, would serve to protect the entire district from tidal overflow, thus obviating the necessity for a separate system of levees for each subdrainage district within the swamp or marsh areas.

"See the testimony of plaintiff's expert witness, Hugh C. Smith, civil engineer, who was the first engineer of the Bayou Terre-aux-Boeufs Drainage District, on cross-examination, page 9 of the Note of Evidence:

" **'By Mr. Wall:**

" **'Q.** The idea of the engineer of the board was that if this district were reclaimed by forming subdrainage districts, that general system of outlets for each subdrainage district was necessary.

" **'A.** Yes, sir; that was the idea, to form these units as the demand for them was made. As this country would be settled up, we began with unit one, and the upper portion; that was the idea of the conception.

" **'Q.** The land down there—the flat land—have no possible value, except they are drained?

" **'A.** None. This general outline was to protect that area from tidal overflow, so as to enable us to subdivide that into units, and take care of each unit as it came up.

" **'Q.** Each unit, of course, would present an independent engineering proposition?

" **'A.** And when the whole was contemplated, to make one comprehensive system.

"Q. That was the idea?

"A. Yes, sir, these units were to be worked so as when completed, one after the other, they would work into one general system.

"Q. And these drainage canals would be used as an outfall canal?

"A. Yes, sir.

"There is no suggestion, either in the petition of plaintiff or in the evidence adduced on the trial, that there was any fraud or abuse of power or discretion on the part of the police jury in the creation of the Bayou Terre-aux-Boeufs Drainage District, or its delimitation territorially, and, I understand from the argument of the learned counsel for the plaintiff, that it is conceded that prior to the amendment to Art. 281 of the State Constitution in 1910, the drainage districts throughout the State were authorized by Art. 281 of the constitution to levy special acreage taxes on each acre of land within the limits of their respective districts, for the purpose of constructing systems of drainage whether by gravity or by levees and pumps, and there could be no doubt of such authority, because in connection with this identical drainage district, the Supreme Court of Louisiana, in the case of *Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District v. Baker*, reported in the 124 La., affirmed the right of the board of commissioners of the Bayou Terre-aux-Boeufs Drainage District to levy special acreage tax of three cents per acre on every acre of land within its limits. Before proceeding to affirm the validity of such a levy, the Court stated the question before it for decision to be:

"Whether a tax of five mills on all assessable property in the plaintiff district, and another tax of three cents per acre on every acre of land with-

in its limits shall be levied for forty years, beginning with 1908, for the purpose of draining the district, have been legally imposed, is the question.' *124 La., 217.*

"Of course, it is too plain for discussion that where the authority to levy a tax of less than the constitutional limit is in controversy, and the Supreme Court affirms the authority to levy such a tax, there is a direct affirmance of the right to levy up to the constitutional limit. If the right existed to levy acreage taxes on each and every acre of land throughout the drainage district, to provide a general system of drainage for the district of whatever character that might appeal to the good judgment of the board of commissioners, as feasible and preferable, prior to the amendment to Art., 281 of the constitution adopted in 1910, the right would continue to exist, unless destroyed by the amendment. Upon consulting Act 197 of 1910, which later became Art. 281 of the Constitution, we find the third paragraph to be as follows:

"'Municipal councils shall have authority to create within their respective limits one or more sewerage districts; and nothing herein contained shall prevent drainage districts from being established under the laws of this State, which shall, in addition to the powers hereinabove granted, have the further power and authority to levy and assess annual contributions or acreage taxes on all lands situated in such districts, for the purpose of providing and maintaining drainage systems, not exceeding fifty (50) cents per acre for a period not exceeding forty (40) years, when authorized to do so by majority in number and amount of the property taxpayers of said district, qualified to vote under the constitution and laws of this State, who vote at an election held for the purpose and

in the manner provided in the first part of this article, and said drainage districts, through the boards of commissioners thereof, when authorized as hereinabove provided, 'may incur debt and issue negotiable bonds therefor, payable in principal and interest out of and not to exceed in principal and interest, the aggregate amount to be raised by said annual contributions or acreage taxes during the period for which the same are levied. No such drainage bonds shall be issued for any other purpose than that for which said contributions or acreage taxes were voted or run for a longer period than forty (40) years from their date or bear a greater rate of interest than five (5) per cent per annum or be sold for less than par.

"By comparing this article, with the corresponding paragraph of Article 281 of the constitution, as it was from 1906 to 1910, we find that the language is the same, except that the amount of the annual acreage tax, that could be levied, was increased from twenty-five cents to fifty cents per acre. A mere reading of the paragraph discloses the fact that it is complete in itself, and does not limit the board of drainage commissioners to a gravity drainage system. A reading of the whole of Act 197 of 1910 does not disclose any limitation as to the kind of drainage system, whether by gravity or levees and pumps, that may be constructed by the board of commissioners, with proceeds of acreage taxes voted by the taxpayers of the district. My interpretation of Art. 281 of the Constitution, as amended in 1910, is that it provided three complete, comprehensive, independent and alternative methods of securing drainage:

"1st. It is provided that a drainage system, without specifying its character, may be constructed, with the proceeds of bonds, based on an *ad va-*

lorem tax on all property throughout the district, authorized at an election by the property tax payers.

"2nd. It is provided that a drainage system may be constructed, with the proceeds of bonds, based on an acreage tax on all property throughout the district, authorized at an election by the property taxpayers.

"3rd. It is provided that a drainage system, by levees and pumps, may be constructed, affecting particular areas, on the petition of the owners of a majority of the acres of land to be affected by the particular system of drainage to be installed.

"The legislature and people of the State of Louisiana have interpreted this article of the constitution in the same way for in order to restrict the character of the system of drainage that could be provided from funds derived from bonds based on acreage taxes voted by the property taxpayers of the district, to gravity drainage, it was found necessary to amend the paragraph of Art. 281 of the constitution, providing for the construction of drainage systems from the proceeds of bonds based on acreage taxes, so as to limit the character of the system to gravity drainage, and the tax to land susceptible of gravity drainage. If, as learned counsel for plaintiff contends, the article already limited such a system to gravity drainage, and the tax to land susceptible of drainage by gravity, the legislature, in submitting the proposed change in this paragraph of Art. 281 to the people of the State for their approval, and the people, in approving such change, have been guilty of a foolish act. In my opinion, the amendment was necessary, in order to take away the right of the board of commissioners to construct a system of drainage by levees and pumps, with the proceeds of bonds

based on acreage taxes, if it saw fit to do so; and its power to levy acreage taxes on every acre of land in the drainage district up to the constitutional limit to pay such bonds, remained unimpaired, up to the time of the amendment of 1914.

"In the case of *Shaw v. Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District*, 138 La., 928, Chief Justice Monroe said:

"The issue of \$500,000.00 of bonds was authorized by the taxpayers, at an election held for that purpose on August 26, 1912, and it is alleged by plaintiff that the authority to impose the tax for their payment was derived from the acts of 1910 and 1912, to which we have referred; but we do not so understand it. The tax was authorized before the Act of 1912 became a law, in the Parish of St. Bernard, and the scheme of taxation contemplated by Section 21 of Act 317 of 1910 being entirely different from that contemplated by the constitutional amendment of 1906, in accordance with which the tax here in question was levied.

The scheme proposed by the statute must have been intended as an alternative to that provided for by the constitution, and was necessarily optional, and not compulsory, since the statutes could not have been intended to repeal the constitution.

"The case of *Marceaux v. Cameron Drainage District No. 3*, 13 La., 913, is based upon provisions of the constitutional amendment of 1914 (other than that heretofore referred to) which contemplate the establishment of systems of "gravity drainage," make it the duty of drainage commissioners to pursue a particular method in providing for both drainage and reclamation of lands which must be leveed and pumped, and authorize a maximum acreage tax of \$3.50 per acre.

"It is evident that the change in the law was made because it was thought that the right con-

ferred, and obligations imposed, by the new constitutional enactment, had not been conferred and imposed by the old, which was true. And it is equally evident that the change was by constitutional amendment, because it was thought, in view of the existing provisions of the constitution, that the General Assembly was powerless to make it, which was also true. But the amendment in question does not affect, or purport to affect, rights acquired under the constitution, as it stood prior to the adoption of the amendment, and hence the decision in the *Marceaux case* has no bearing in this case.

"Our conclusion, then, as relates to the tax of 16 cents per acre, levied for the payment of the bond issue of \$500,000.00, as also the tax of 3 and 6 cents per acre levied for the other bonds, is that they were validly levied, under the amendment proposed by Act 122 of 1906, upon "all lands situated in the Bayou Terre-aux-Boeufs Drainage District," and that plaintiff has no standing to question their validity upon the grounds alleged in his petition." 138 La., pp. 928-929.

"Therefore, I conclude that the board of commissioners, fully authorized and empowered by the Constitution, as it stood from 1910 to 1914, had the power to levy the sixteen cents per acre tax on plaintiff's swamp or marsh lands, in 1915, and that the taxes of that year are valid and collectible.

"I do not understand that it has ever been decided by any court that where a special tax has been levied, according to law, to pay for a public improvement, and the tax has been funded into bonds and the bonds sold and the proceeds used to pay for the public improvement, but owing to an honest mistake of judgment, on the part of the legislative body, authorizing the tax, there is a

failure to realize the benefits contemplated, such failure of benefit can be urged as a reason for repudiating the tax. Certainly, the learned counsel for the plaintiff has not directed the attention of the court to any such case.

"In the case of *L. & N. R. R. v Barber Asphalt Paving Co.*, 197 U. S., 430, 433, Mr. Justice Holmes, as the organ of the court, said:

"The argument for the plaintiff in error oscillates somewhat between the objections to the suit and the most specific grounds for contending that it cannot be applied constitutionally to the present case. So far as the former are concerned, they are disposed of by the decision of this court. There is a lack of logic when it is said that special assessments are founded on special benefits, and that a law which makes it possible to assess beyond the amount of special benefit attempts to rise above its source. But that mode of argument assumes the exactness in the premises which does not exist. The foundation of this familiar form of taxation is a question of theory. The amount of benefit which an improvement will confer upon particular lands—indeed, whether it is a benefit at all—is a matter of forecast and estimate. In its general aspect, at least, it is peculiarly a thing to be decided by those who make the law. The result of the constitutional principle is simply to shift the burden to a somewhat larger taxing district—the municipality—and to disguise, rather than to answer, the theoretic doubt. It is dangerous to tie down legislatures too closely by judicial constructions not necessarily arising from the words of the Constitution. Particularly as was intimated in *Spencer v. Merchant*, 125 U. S., 345, it is important for this court to avoid extracting from the very general language of the 14th amendment a system

of delusive exactness in order to destroy methods of taxation which were well known when that amendment was adopted, and which it is safe to say that no one then supposed would be disturbed. It now is established beyond permissible controversy that laws like the one before us are not contrary to the Constitution of the United States. *Walston v. Nevin*, 128 U. S., 578; *French v. Barber Asphalt Paving Co.*, 181 U. S., 324; *Webster v. Fargo*, 181 U. S., 394; *Cass Farms Co. v. Detroit*, 181 U. S., 396; *Detroit v. Parker*, 181 U. S., 399; *Chadwick v. Kelly*, 187 U. S., 540; *Schaefer v. Werling*, 188 U. S., 516; *Seattle v. Kelleher*, 195 U. S., 351, 358.

"A statute like the present manifestly might lead to the assessment of a particular lot for a sum larger than the value of the benefits to that lot. The whole cost of the improvement is distributed in proportion to area, and a particular area might receive no benefits at all, at least, if its present and probable use be taken into account. If that possibility does not invalidate the act, it would be surprising if the corresponding fact should invalidate an assessment. Upholding the act as embodying a principle generally fair and doing as nearly equal justice as can be expected, seems to import that if a particular case of hardship arises under it, in its natural and ordinary application, that hardship must be borne as one of the imperfections of human things.

"And this has been the implication of the cases. *Davidson v. N. O.*, 96 U. S., 97, 106; *Mattingly v. District of Columbia*, 97 U. S., 687; *Parsons v. District of Columbia*, 170 U. S., 45, 52, 55; *Detroit v. Parker*, 181 U. S., 399, 400; *Chadwick v. Kelly*, 187 U. S., 540, 544.'

"The principles announced in that case and in the cases cited are directly in line with the decisions of our own supreme court, in the cases of: *George, et al., v. Sheriff and Tax Collector*, 45 An., 1233; *DeGravelle v. Iberia and St. Mary Drainage District*, 104 La., 707; *Myles Salt Co. v. Iberia and St. Mary Drainage District*, 134 La., 903, and *Shaw v. Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District*, 138 La., 917.

"The cases relied upon by the plaintiff are: *Norwood v. Baker*, 179 U. S., 269; *Myles Salt Co. v. Iberia and St. Mary Drainage District*, 239 U. S., 478, and *Shaw v. Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District*, 138 La., 917. Those cases can have no possible application to the facts of this case.

"The case of *Norwood v. Baker*, was a case whereby a village ordinance apparently aimed at a single person (a portion of whose property was condemned for a street) the entire cost of opening the street, including not only the full amount paid for the strip condemned, but the costs and expenses of the condemnation proceedings, was thrown upon the abutting property and the person whose land was condemned. The Supreme Court of the United States under these facts held that the taxing was not a legitimate exercise of the taxing power. It was, in effect, a taking of private property for public use without compensation.

"The *Myles Salt Co.* case was a case that went up to the Supreme Court of the United States on an exception of no cause of action, which admitted, for the purposes of the trial of the questions of law involved, the truth of the allegations of the petition. In the petition, it was charged that the police jury, in organizing the drainage district, included Weeks' Island and the salt deposits therein, only for the benefit of the other property and not upon the

theory that a general scheme of drainage would enure to the benefit of all the property therein, even indirectly, and not through the exercise of sound and legal legislative discretion the island was included within the confines of the district, and that, in pursuance of said scheme and plan, an election was held for the imposition of an *ad valorem* tax of five mills for a period of forty years upon which to predicate an issue of bonds.

"Therefore, that case disclosed a fraud or palpable abuse of its discretion on the part of the legislative department, in creating the drainage district, and the Supreme Court of the United States very properly held that where it was shown that the legislative branch of the government had included property within the limits of the taxing district for a public improvement, for the purpose of deriving a revenue to be applied solely and exclusively to the benefit of other property, and with the intention of obtaining a revenue to be expended for the benefit of other property, to force the property so included to pay the tax, would be to deprive the owner of his property without due process of law.

"In the case of *Shaw v. Board of Commissioners*, the Supreme Court found that the police jury had included Shaw's property in the drainage district, solely for the purpose of deriving revenues, to be expended for the benefit of other lands, subject to be improved by drainage, without any benefit to plaintiff or his property whatever, present or prospective.

"It is clear that plaintiff's property was included in the drainage district not in the exercise of "legal legislative discretion," not because the system of drainage would enure to the benefit of the property, even indirectly, but with the purpose of deriving revenues, so as to grant a special benefit to other lands, subject to be improved by drainage,

without any benefits to plaintiff or his property whatever, present or prospective.'

"And, it was under that state of facts, that the Supreme Court of Louisiana held that the collection of the tax would deprive Shaw of his property, without due process of law.

"Therefore, it is obvious that none of the three cases relied on by plaintiff are, in any sense, pertinent to this case, wherein there is not even a suggestion of any fraud or palpable abuse of legislative discretion on the part of the police jury in creating a drainage district—the worst that could be said being, even accepting counsel's interpretation of the facts, in which the Court does not concur, that owing to an honest mistake of judgment, the benefits determined by the police jury, as a result of the public improvement, have failed to materialize.

"The plea of estoppel urged by the defendant should be maintained. It appears from the testimony of Mr. Chas. Godchaux, the president of the plaintiff company, that the plaintiff, although fully aware that the drainage district had been created, the property owners had voted taxes, which were being funded into bonds and sold, not only did not protest, but approved all of the proceedings, and expressed its approval by paying all taxes levied by the drainage district, including the sixteen cents acreage tax, which is the only one attacked, up to the year 1914, inclusive, and only refused to pay the sixteen cents per acre in 1915, after the bonds had been sold to *bona fide* holders.

"See the testimony of Mr. Chas. Godchaux, page 4 of the Note of Evidence:

"By Mr. Wall:

Q. Mr. Godchaux, did you pay a sixteen cents acreage tax for 1912?

A. I think we did.

Q. 1913?

A. I think we did.

Q. And 1914?

A. I think we did.

Q. It was only in 1915 that you refused to pay?

A. For the reason that we were always under the impression that they were going to put up pumps. It was only upon investigating thoroughly, we found that the system contemplated would, with the money available, not be sufficient, and therefore there was no use paying a tax, from which we would get no benefit. We have always been very willing, Mr. Wall, to pay any special tax. We paid the tax for the shell road; paid large taxes without revenues, and will be glad to pay the tax if we got some benefit out of it. We believe in taxes and reclamation.

Q. Did you make any investigation of the proceedings of the board, Mr. Godchaux, to find out whether any pumps were contemplated by the district in connection with the general system that they had outlined?

A. We investigated in a general way, and if I am not mistaken was advised that they were going as far as the funds would permit them. That the funds from this tax would not enable them to put in pumps.

Q. When you did investigate you found that your supposition that there would be pumps was erroneous, and then you declined to pay any further?

A. Yes, sir.

Q. In the meantime, while the bonds were being voted and put on the market and sold, and the proceeds expended on this system, you made no protest?

A. Not that I remember, no sir."

"The right to enforce or protect a constitutional right in a Court of equity may be lost by laches, the same as other rights. *Ency. of U. S., Court*

Reports, Vol. 4, p. 80; *Pennsylvania Mutual Life Ins. Co. v. Austin*, 168 U. S., 685.

"Under some circumstances a party who is illegally assessed may be held to have waived all right to a remedy by a course of conduct which renders it unjust and inequitable to others that he should be allowed to complain of the illegality. Such a case would exist if one should ask for and encourage the levy of the tax of which he subsequently complains; and some of the cases go so far in this direction as to hold that a mere failure to give notice of objections to one who, with the knowledge of the person taxed, as contractor, or otherwise, is expending money in reliance upon payment from the taxes, may have the same effect. *Cooley on Taxation*, p. 573, and cases cited in note 5; *Tagh v. Adams*, 10 Cush., 252; *Bidwell v. City of Pittsburg*, 85 Pa. St., 412; *Shutte v. Thompson*, 15 Wall., 151; *Shepard v. Barron*, 194 U. S., 553.

"The Supreme Court of Louisiana is in full accord with the Supreme Court of the United States:

"A taxpayer who petitions for the passage of an ordinance levying a special tax, who actively supports and votes for the ordinance, when submitted to the votes of the taxpayers, who has so acted in advancement of his own interest, and who has secured advantage from the passage of the ordinance, upon which other parties have acted, is estopped from setting up the illegality and unconstitutionality of the tax as a defense against paying it.' *Clinton B. Andrus v. Board of Police of Opelousas, et al.*, 41 An., 697.

"See also, *Laurent Dupre v. Board of Police of Opelousas, et als.*, 42 An., 801; *Mayor, etc., of New Iberia v. Fontellieu*, 108 La., 461; *Taxpayers of Webster Parish v. Police Jury*, 52 An., 466; *Bacas v. Adler*, 112 La., 814; *Burden v. Police Jury of St. Martin Parish*, 127 La., 556.

"The reason of the law is that, if there be grounds for contesting the tax, those who complain should bring the matter to the attention of the Courts within a reasonable time—not wait until the railway company, acting upon the faith of what has been done and the inducement held out, has gone ahead and expended large sums of money in prosecuting the enterprise, the promotion of which was the object of voting the tax.' *Guillory v. Avoyelles Railway Co.*, 104 La., 14.

"See *James v. Arkansas-Southern Ry. Co.*, 110 La., 159; *Gray v. Bourgeoise*, 107 La., 67.'

"And finally, this court, in the case of *Tulare v. Shepard*, where the effect of acquiescence by the taxpayers in paying taxes levied by a *de facto* irrigation district, which it was claimed had not been legally organized, and where the property owners claimed that the collection of the taxes levied by such a district deprived them of their property, without due process of law, was fully dealt with, Mr. Justice Peckham, as the organ of the court, after holding that the *de facto* irrigation district was absolutely estopped from questioning the validity of the bonds in the hands of a *bone fide* holder, held that the property owners of the *de facto* corporation were estopped from raising any objection after having acquiesced in the bonds by paying taxes, as follows:

"In addition to the strength of the position of the plaintiff in the action as a *bone fide* purchaser and holder of the bonds, the position of defendants merit due consideration. Regarding the individual defendants, it is scarcely possible to believe that they were not aware of the proceedings above recited, taken to organize the corporation, and thereafter to issue its bonds, even though it should be admitted that the public notice was not legally sufficient to comply with the statute. They were the

owners of land within the proposed district. The proceedings were all of a public nature, and two public elections were held within the district before the bonds were issued. Of these facts, already detailed, we say it is impossible to believe that the individual defendants did not have knowledge at the time of their occurrence, and yet they took no action to prevent the issuing of the bonds or to call in question by the slightest hint the validity of the organization of the district as a corporation. On the contrary, they entirely acquiesced in all proceedings leading up to their issue, in obtaining the moneys therefrom, in the expenditure thereof for the purpose for which the bonds were issued, and in paying during several years the assessments made upon the lands within the district for the purpose of paying the interest on the bonds which had been issued. After all this had been done, we can properly use the language found in the opinion in *Bissel v. City of Jeffersonville*, 24 How., *supra*, at p. 299:

"It was then too late to call in question the fact determined by the Common Council, and *a fortiori* it is too late to raise that question in a case like the present, where it is shown that the plaintiffs are innocent holders for value.

"Assuming the insufficiency of the notice of the intended presentation of the petition to the board of supervisors, the defendant land owners could have applied to the attorney general for the commencement of an action in the nature of a *quo warranto*, to raise and decide the question, after the board had decided the organization was duly formed. Or they could have themselves commenced an action to restrain the proposed issue of the bonds on the ground that there was no valid corporation, and therefore no valid body to issue them. Their interest as land owners in the district would be sufficient to permit them

to maintain such action. On the contrary, they did nothing, and in view of all the facts above detailed and giving due effect to the provisions of the statute referred to and the determination of the supervisors, together with the recitals in the bonds, it is clear to us that they waived their right to thereafter object on the ground stated, as against 'a . . . *bona fide* holder of the bonds for value. As to the defendant corporation, it seems so clear that it cannot be heard to set up the invalidity of the bonds on the ground that it was not legally incorporated that we do not think it necessary to further discuss the question. *Taylor on Corporations*, 4 Ed., Sec. 146." *Tulare Irrigation District v. Shepard*, 185 U. S., pp. 25, 26.'

"A decision of the objection urged by plaintiff to the jurisdiction of the Court *ratione materiae* is not necessary to a decision of the case, as I am of the opinion that the tax is valid and the injunction issued herein should be dissolved." (Reasons of the trial judge for judgment 53-65.)

The proposition advanced by the Plaintiff in Error is that where a taxing district is created by the legislative branch of the government, pursuant to the Constitution, and there is an exercise of the constitutional power to levy taxes to pay the costs of the construction of a public improvement in the district in a certain manner, and it develops that, in the opinion of the property owner, the benefits contemplated are not realized, the property owner has the right to refuse to pay the tax levied to pay the costs of the public improvement and repudiate the bonds, into which the tax has been funded, after the bonds have been acquired, by third persons, *bona fide*, for their value. This presupposes that the power of taxation, reserved to

the legislative branch of the government, can be subjected to review and control by the judiciary; that the courts have the power when the legislative department has determined that there will be a certain benefit derived from the public improvement to be installed by all of the property within the limits of the taxing district in a certain proportion, or to a certain amount (which involves, in its last analysis, prophesy on the part of the legislative department) to discredit the prophet and substitute for a legislative, a judicial guess, in the absence of a charge of fraud or palpable abuse. In other words that, with reference to benefits to be derived, the judicial branch of the government is more competent to prophesy correctly than the legislative branch.

It is difficult to understand upon what theory the belief that a court can forecast the future any better than a legislature is based. In either event, the prophesy or forecast of the future can never be verified until the future materializes, and we know of nothing upon which to predicate the belief that any person, natural or artificial, political or private, is endowed with power to foretell the future, which is exclusively an attribute of Omniscience. If public parks are laid out, roads built, public buildings constructed and drains installed there may not be (owing to lack of population or other causes) an immediate and direct appreciation of the pecuniary value of the property taxed to pay the costs of these improvements; on the other hand, when sufficient time shall have elapsed for the improved conditions to exert their full influence, the benefit derived may be almost immeasurable. Therefore, the approval of the principle by the courts that the finding of benefits to accrue

as the result of discretion legitimately exercised on the part of the legislative branch of the government, is not subject to review by the judicial branch, was eminently wise.

It has long been known that it is impossible to exercise the power of taxation in such a way that all will be benefited alike from the imposition of a tax. Always, some individual obtains more direct benefit than others. The most that can be hoped is to attain approximate equality, and in determining the mode or exercise of the power of taxation, it is necessary to consider, not only present conditions, but future hopes; and because, sometimes, the hopes prove to have been fatuous, there is no cause for the escape from the payment of the tax which has been levied.

In the case of *Spencer v. Merchant*, 125 U. S., 345-355, in a most able opinion by Mr. Justice Gray, this question was exhaustively reviewed, and in that opinion the court said:

"The power to tax belongs exclusively to the legislative branch of the government. *U. S. v. N. O.*, 98 U. S., 381-392; *Meriweather vs. Garrett*, 102 U. S., 472. In the words of Chief Justice Chase, condensing what had been said long before by Chief Justice Marshall 'the judicial department cannot prescribe to the legislative department limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons; but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected.' *Veazie Bank v. Fenno*, 8 Wall., 533, 548; *McCulloch v. Maryland*, 4 Wheat., 316, 428; *Providence Bank v. Billings*, 4 Peters, 514-563. See also, *Kirtland v. Hotchkiss*, 100 U. S., 491-497. Whether the estimate of the value of the land for the purpose of taxation exceeds its true value, this court on writ

of error to a state court cannot inquire. *Kelly v. Pittsburg*, 104 U. S., 78, 80.

"The legislature, in the exercise of its power of taxation, has the right to direct the whole or a part of the expense of a public improvement, such as the laying out, grading or repairing of a street, to be assessed upon the owners of land benefited thereby; and the determination of the territorial district which should be taxed for local improvement is within the province of legislative discretion. *Willard v. Presbury*, 14 Wall., 676; *Davison v. N. O.*, 96 U. S., 97; *Mobile County v. Kimball*, 102 U. S., 691, 703, 704; *Hagar v. Reclamation Dist.*, 111 La., 701. If the legislature provides for notice to and hearing of each proprietor at some stage of the proceedings upon the question of what proportion of the tax shall be assessed upon his land, there is no taking of his property without due process of law. *McMillan v. Anderson*, 95 U. S., 537; *Davison v. N. O.*, 96 U. S., 97, and *Hagar v. Reclamation Dist.*, above cited.

"In *Davison v. N. O.*, it was held that if the work was one which the State had authority to do and to pay for by assessments on the property benefited, objections that the sum raised was exorbitant, and that part of the property assessed was not benefited, presented no question under the 14th Amendment to the Constitution, upon which this Court could review the decision of the State Court. 96 U. S., 100-106. In the absence of any more specific special restrictions than the general prohibition against taking property without due process of law, the legislature of the State having the power to fix the sum necessary to be levied for the expense of a public improvement, and to order it to be assessed, either, like other taxes, upon property generally benefited or only upon lands benefited by the improvement is authorized to determine both the amount of the whole tax on the class of lands, which will receive the bene-

fit, and should therefore bear the burden, although it may, if it sees fit, commit the ascertainment of either or both of these facts to the judgment of commissioners.

"When the determination of the lands to be benefited is entrusted to commissioners, the owners may be entitled to notice and hearing upon the question whether their lands are being benefited and how much; but the legislature has the power to determine, by the statute imposing the tax, what lands, which might be benefited by the improvement are in fact benefited, and if it does so, its determination is conclusive upon the owners and the courts, and the owners have no right to be heard upon the question whether their lands are benefited or not; but only upon the validity of the assessment and its apportionment among the different parcels of the class which the legislature has conclusively determined to be benefited.

"In determining what lands are benefited by the improvement, the legislature may avail itself of such information as it deemed sufficient, either through investigations by its committees or by adopting its own estimates or conclusions of others, whether those estimates or conclusions previously had or had not any legal sanction."

The principles thus clearly enunciated in the case of *Spencer v. Merchant* have been affirmed in every case decided since, and may, without hesitation, be accepted as being too firmly implanted in the jurisprudence of this court to ever be deviated from, and these principles seem to absolutely preclude the idea that failure to realize from a public improvement the benefits honestly determined in advance, or prophesized, by the legislative branch of the government, can ever be held to be good ground for repudia-

tion of the tax. No doubt was entertained by the legal profession as to the correctness of the principles announced in *Spencer v. Merchant*, until the doubt raised by the too general language used in the case of *Norwood v. Baker*. Immediately after the *Norwood-Baker* case was decided, by reason of the doubt created by that decision, a flock of cases, all to be found reported in the 181 U. S., involving the avlidity of special assessments, came flying into the court of the United States.

The first of those cases decided was that of *French v. Barber Asphalt Paving Co.*, 181 U. S., 324, 344. In that case, Mr. Justice Shiras, as the organ of the court, proceeded to review, at great length, all of the decisions previously rendered, and through him, the court hastened to qualify the language used by it in deciding the case of *Norwood v. Baker*, thus in effect restricting that case to the principles actually involved therein. The court said:

"This array of authority was confronted in the courts below with the decision of this court in the case of *Norwood v. Baker*, 172 U. S., 269, which was claimed to overrule our previous cases and to establish the principle that the cost of the local improvement cannot be assessed against abutting property, according to frontage, unless the law, under which the improvement is made, provides for a preliminary hearing as to the benefits to be derived by the property to be assessed.

"But, we agree with the Supreme Court of Missouri in its view that such it not the necessary legal import of the decision in *Norwood v. Baker*. That was a case whereby a village ordinance apparently aimed at a single person, a portion of whose property was condemned for a street, the entire cost of opening the street, including not only the full

amount paid for the strip condemned, but the costs and expenses of the condemnation proceedings was thrown upon the abutting property and the person whose land was condemned. This appears both to the court below and to a majority of judges of this court to be an abuse of the law, an act of confiscation, and not a valid exercise of the taxing power. This court, however, did not affirm the decree of the trial court, awarding a perpetual injunction against the making and collection of any special assessments upon Mrs. Baker's property, but said:

"It shall be observed that the decree did not relieve the abutting property from liability for such amount as could be properly assessed against it. Its legal effect, as we now adjudge, was only to prevent the enforcement of the particular assessment in question. It left the village, in its discretion, to take such steps, as were within its power to take either under existing statutes or under any authority that might thereafter be conferred upon it, to make a new assessment upon the plaintiff's abutting property for so much of the expense of the opening of the street as was found after due and proper inquiry to be equal to the special benefits to the property. By the decree rendered, the court avoided the performance of functions appertaining to an assessing tribunal or body, and left the subject under the control of the local authorities designated by the State.'

"That this decision did not go to the extent claimed by the plaintiff in error is evident, because in the opinion of the majority, it is expressly said that the decision was not inconsistent with our decisions in *Parsons v. District of Columbia*, 170 U. S., 45, 56, and in *Spencer v. Merchant*, 125 U. S., 345, 357."

The next case to be considered and decided was that of *Wight v. Davison*, 181 U. S., 371, 384, in which the

case of *Norwood v. Baker* was further distinguished from the cases previously decided. In that case, the court said:

"We need not pursue this suggestion, because we think the Court of Appeal, in regarding the decision of *Norwood v. Baker*, as overruling our previous decisions, in respect to congressional legislation, in respect to public local improvements in the District of Columbia, misconceived the meaning and effect of that decision. There the question was as to the validity of a village ordinance, which imposed the entire costs and expenses of opening a street, irrespective of the question whether the property was benefited by the opening of the street. The legislature of the state had not defined or designated the abutting property as benefited by the improvement, nor had the village authorities made any inquiry into the question of benefits. There having been no legislative determination as to what lands were benefited, no inquiry instituted by the village councils, and no opportunity afforded to the abutting owner to be heard on the subject, this court held that the exaction from the owner of private property of the cost of the public improvement in excess of the special benefits accruing to him is, to the extent of such cases, a taking, under the guise of taxation, of private property, for public use, without compensation, and accordingly affirmed the decree of the Circuit Court of the United States, which, while preventing the enforcement of the particular assessment in question, left the village free to make a new assessment upon the plaintiffs' abutting property for so much of the expense of opening the street, as would be found, upon due and proper inquiry, to be equal to the special benefits accruing to the property. That it was not intended by this decision to overrule

Brauman v. Ross and *Parsons v. District of Columbia* is seen in the opinion where both those cases are decided and declared not to be inconsistent with the conclusions reached. *Norwood v. Baker*, 172 U. S., 259, 294.

"Special facts, showing an abuse or disregard of the law, resulting in an actual deprivation of property, may give grounds for applying for relief to a court of equity; and this was thought be a majority of this court to have been the case in *Norwood v. Baker*. But no such facts are disclosed in this record."

The next case was *Tonawanda v. Lyon*, 181 U. S., 391, in which the general language used in *Norwood v. Baker* was further limited, as follows:

"What was claimed was that a state statute which directs municipalities to assess the whole expense of paving any highway therein upon the lands abutting upon the highway so improved in proportion to the feet frontage of such lands, without providing for a judicial inquiry into the value of such lands and the benefits actually to accrue to them by the proposed improvement is unconstitutional and void. And it was held by the court below that, notwithstanding the court of the state may have held otherwise, it was its duty to follow the decision of this court in the case of *Norwood v. Baker*, 172 U. S., 269, which was regarded by the court below as establishing the principle contended for, and accordingly the defendants were adjoined from enforcing payment of the assessments. But we think that, in so understanding and applying the decision in *Norwood v. Baker*, the learned judge extended the doctrine of that case beyond its necessary meaning.

"It was not the intention of the court, in that case, to hold that the general and special taxing

system of the state, however long existing and sustained as valid by their courts, have been subverted by the 14th Amendment of the Constitution of the United States. The purpose of that amendment is to extend to the citizens and residents of the state the same protection against arbitrary state legislation, affecting life, liberty and property, as is afforded by the 5th amendment against similar legislation by Congress. The case of *Norwood v. Baker*, presented as the judge in the court in the present case said, 'considerations of peculiar and extraordinary hardships,' amounting in the opinion of a majority of the judges of this court, to actual confiscation of private property to public use, and bringing the case fairly within the reach of the 14th Amendment.

"The facts disclosed by the present record do not show any abuse of the law, nor that the burdens imposed on the property of the complainant were other than those imposed upon that of other persons in like circumstances; and it is obvious from the expressions in the opinion of the trial judge, that he reached his conclusion, because constrained by what he understood to be the principle established by the *Norwood-Baker case*."

The case of *Tonawanda v. Lyon* fits the instant case like a glove, because by the State law, under which that case arose, the cost of the public improvement was ordered by the act of the Legislature to be distributed among the property owners in fixed proportion according to frontage on the street being paved, without any provision for a preliminary hearing as to the benefit to be derived by such property owners. In this case, the State Constitution has ordered the cost of the public improvement to be borne by an

acreage tax on the lands, and has fully safeguarded the right to attack the proceeding in the courts.

The next case to be decided was that of *Webster v. Fargo*, 181 U. S., 394, 395. In that case the Court said:

"But we agree with the Supreme Court of North Dakota in holding that it is within the power of the legislature of the state to create special taxing districts, and to charge the cost of a local improvement, in whole or in part, upon the property in said districts, either according to valuation, or superficial area, or frontage, and that it was not the intention of this court in *Norwood v. Baker*, to hold otherwise."

In the following cases, in the same volume of the United States Court reports, the cases just quoted were all approved, and made the basis of the respective opinions:

Cass Farms Co. v. Detroit, 396; *Detroit v. Parker*, 399; *Wormley v. District of Columbia*, Allen v. District of Columbia, 402; *Shumate v. Hennen*, 402; *Farrell v. Chicago Park Commissioners*, 404.

In the case of *Hibben v. Smith*, 191 U. S., 325-326, the court said:

"The provisions of the 14th Amendment do not cover such an objection as is now under consideration. The general system of procedure for the levying and collection of taxes, which is established in this country is, within the meaning of the Constitution, due process of law. *Kelly v. Pittsburgh*, 104 U. S., 78. A provision made by the Legislature of a State, in relation to the manner of levying an assessment for a local improvement, is within this

principle of a proceeding for the levying and collection of taxes, and unless it be in violation of some particular provision of the Federal Constitution, it will be upheld in this court. The 14th Amendment, it has been held, legitimately operates to extend to the citizens and residents of the state the same protection against arbitrary state legislation, affecting life, liberty and property, as is offered by the 5th Amendment against similar legislation by Congress; but that the federal courts ought not to interfere when what is complained of amounts to the enforcement of the laws of a State applicable to all persons in like circumstances and conditions, and that the federal courts should not interfere, unless there is some abuse of law amounting to confiscation of property or a deprivation of personal rights, such as existed in the case of *Norwood v. Baker*, 172 U. S., 269.

"These principles have been reiterated in a series of cases, reported in the 181 U. S., commencing with *French v. Barber Asphalt Paving Co.*, at page 324 of that volume."

The next case is that of *L. & N. R. R. v. Barber Asphalt Paving Co.*, 197 U. S, 430, 433, which has already been reviewed in the reasons for judgment *supra*.

In the case of *Wagner v. Baltimore*, 239 U. S., 207, 219, after affirming the principles announced in *Spencer v. Merchant*, and citing, with approval, all of the cases decided from that time on, the court said:

"*Norwood v. Baker*, *supra*, is much relied upon by the plaintiff in error, and while this court has shown no disposition to overrule that case when limited to the decision actually made by the court, much that is said in it must be read in connection with the subsequent cases in this court already referred to. In

Norwood v. Baker, a portion of a person's property located in a village in Ohio, was condemned for street purposes, and the entire cost of opening the street, including the amount paid for the strip condemned, with the costs and expenses of condemnation, was assessed upon the abutting property owner, whose land was condemned. This, it was said in *French v. Barber Asphalt Paving Co.*, *supra*, was an abuse of the law and an act of confiscation, and not a valid exercise of the taxing power. Taking the decisions in this court together, we think it results that the legislature of a state may determine the amount to be assessed for a given improvement, and designate the lands and property benefited thereby, upon which the assessment is to be made, without first giving an opportunity to the owners of the property to be assessed to be heard upon the amount of the assessment or the extent of the benefit conferred."

In the case of *Houck v. Little River Drainage District*, the power of the States to create special taxing districts to defray the cost of public improvements is extensively reviewed, and *Spencer v. Merchant* and subsequent cases emphatically affirmed. The court said:

"The ultimate contention, then, is that the plaintiffs in error cannot be subjected to this preliminary tax of 25 cents an acre, because their lands, as they insist, will not be benefited by the plan of drainage. In authorizing the tax, it is said, the Legislature has departed from the principle of benefits, and the tax is asserted to be *pro tanto* an uncompensated taking of their property for public use. But the power of taxation should not be confused with the power of eminent domain. Each is governed by its own principles. *Mobile County v. Kimball*, *supra*; *Bauman v. Ross*, 167 U. S., 548, 590; *Wright v. Davidson*,

181 U. S., 371, 379; *People ex rel., Griffen v. Brooklyn*, 4 N. Y. 419; *Cooley on Taxation*, p. 430; *Lewis on Eminent Domain*, 3rd Ed., 4, 5. A tax is an enforced contribution for the payment of public expenses. It is laid by some rule of apportionment according to which the persons or property taxed share the public burden, and whether taxation operates upon all within the state, or upon those of a given class or locality, its essential nature is the same. The power of segregation for taxing purposes has everyday illustration in the experiences of local communities, the members of which, by reason of their membership, or the owners of property within the bounds of the political subdivision, are compelled to bear the burdens both of the successes and of the failures of local administration. When local improvements may be deemed to result in special benefits, a further classification may be made and special assessments imposed accordingly; but even in such case there is no requirement of the Federal Constitution that for every payment there must be an equal benefit. The state in its discretion, may lay such assessment in proportion to position, frontage, area, market value, or to benefits estimated by commissioners."

The *Myles Salt Co. case* and the *Shaw case*, relied on by plaintiff and appellant, are, in no respect, opposed to this army of cases iterating and reiterating the principles laid down in *Spencer v. Merchant*. The decisions in those cases are based squarely on a fraudulent or palpably arbitrary abuse by the police juries in including property within the limits of the drainage district.

In this case, there is not the slightest intimation that the property in contest was included by the Police Jury of St. Bernard Parish, with any intent other than to benefit it.

The principles clearly enunciated in the preceding cases were carefully reiterated, maintained and reserved by the Supreme Court of Louisiana and this court in deciding those cases.

In the *Shaw* case the Supreme Court of Louisiana said:

"It is clear that plaintiff's property was included in the drainage district not in the exercise of a legal legislative discretion, not because the system of drainage would enure to the benefit of the property even indirectly, but with the purpose of deriving revenues so as to grant a special benefit to other lands subject to be improved by drainage without any benefit to plaintiff or his property whatever, present or prospective."

And added:

"There is no doubt that the Legislature of the State may constitute drainage districts and define their boundaries or delegate such authority to legal or Legislative bodies, as in the present case to the Police Juries of the parishes of the State; and that their action cannot be assailed under the Fourteenth Amendment, unless it is palpably arbitrary and a plain abuse"

Obviously, this reasoning and conclusion is not applicable here. The land here in controversy has been materially increased in value as a result of its inclusion in this drainage district and has experienced not only indirect, but very direct and positive drainage benefits. While there might be some discussion as to the amount of the benefits, and the amount might vary in the opinions, in regard thereto, there cannot be any disguising the fact that there was a material benefit; nor can there be any well founded contention that

in including this land within the district, there was any arbitrary action of abuse of power or discretion.

In the next case relied on, the *Myles Salt case*, the facts were thus stated by this:

"Weeks' Island, the property which is the subject of controversy, is one of several islands, being the highest uniform elevation above sea level in southwest Louisiana. It arises abruptly 175 feet or more, is surrounded on two sides by bayous, on the rear by a salt water marsh, and on the front by a bay—Vermillion Bay, with a small strip of salt water marsh intervening. It is topographically high and rolling, the drainage excessive, and washing and erosion are serious problems. The country around it outside of the sea marsh is thickly settled and presents the character of low lands as distinguished from high lands or uplands reaching a maximum elevation of about fifteen feet as against a maximum elevation of Weeks' Island of 175 feet. In lieu of needing drainage, the problem the island is confronted with 'is to guard against washing and erosion and to the marshes subject to tidal overflow between it and Bayou Teche on all sides and to all extents leads to the marshes subject to tidal overflow between it and the mainland.'

"Some years ago, a drainage district known as the Iberia and St. Mary Drainage District was organized at the instigation of interested individuals for the purpose of draining into the bayous and marshes surrounding Weeks' Island and certain lands lying between Bayou Teche and the marshes. Solely with the view of deriving revenue from the assessment of Weeks' Island and the salt deposit therein, and only for the benefit of the other properties, and not upon the theory that a general scheme of drainage would enure to the benefit of all the property

therein, even indirectly, and not through an exercise of sound and legal legislative discretion, the Island was included within the confines of the district. In pursuance of such scheme and plan an election was held for the imposition of an *ad valorem* tax of five mills for a period of forty years upon which to predicate an issue of bonds. The election resulted in the imposition of the tax.

"It was not intended, nor has it ever been intended, nor was it possible, nor is it possible, to give any of the benefits of the drainage scheme to Weeks' Island or to the salt deposit therein, directly or indirectly, its inclusion in the district being solely and only for the purpose of deriving revenue therefrom for the special benefit of the other lands subject to be improved by drainage, without any benefit to plaintiff or its property whatever. The Island is the highest assessed piece of property in the district and has never received one single cent of benefit from the drainage system constructed and maintained in such district, and never can or will, in the future, receive any benefit whatever from the system."

Merely to state the facts as above is to show how utterly unlike is that case and the case at bar. The Court carefully predicated its opinion upon the fact that Weeks' Island had been included within the boundaries of the district "only for the benefit of the other properties and not upon the theory that a general scheme of drainage would enure to the benefit of all the property therein, even indirectly, and not through an exercise of sound and legal legislative discretion." Here it is conclusively shown that the property of the plaintiff was included in the district under a general scheme of drainage which would enure to its benefit and that of all the property, and that as the re-

sult of its inclusion it received a direct, substantial benefit. There was, therefore, not only not an abuse of legislative discretion, but there was a wise exercise of that discretion.

The case of *Norwood v. Baker* was the case in which the entire cost of opening a street, including not only the full amount paid for the strip condemned, but the costs and expenses of the condemnation proceedings were thrown upon an abutting property and the person whose land was condemned. The effect was the taking of property for public use without compensation to the owner, a state of facts which is very far from being present in the case at bar.

We again ask what could judgments rendered in cases where the property charged with the tax was included solely for the purpose of deriving revenue to improve the property of others, have to do with this case, where a drainage district has been honestly organized, in accordance with the constitution and laws of Louisiana, where a tax has been voted by the property owners in accordance with such constitution and laws; where a tax has been levied and the bonds sold, and years afterwards the allegation is made that no benefit has been derived or will be derived from the public improvement, as a cause for refusing to pay the tax?

In Louisiana, the method of taxation pursued in the instant case was firmly imbedded in the jurisprudence of Louisiana long prior to the adoption of the 14th Amendment, as appears from the case of *Yeatman v. Crandall*, 11 An., 220, which was decided in 1856, and in the cases therein cited.

The case of *Davidson v. N. O.*, 96 U. S., 72, was a Louisiana case, and the principles announced in that case

had never been deviated from by the Supreme Court of Louisiana, until the final judgment handed down by that court in the *Shaw case*, under a total misconception, as the writer firmly believes, of what was actually decided by this court in the *Myles Salt Co. case*. How unreservedly the principles laid down in the case of *Davidson v. N. O.* were accepted by this court is shown by the opinion in the case of *George, et al., v. Sheriff and Tax Collector*, reported in the *45 An., 1233*.

"The plaintiffs and appellees are owners of lands situated within the limits of the 'Caddo Levee District'; that district embraces all that portion of the land subject to overflow in the Parish of Caddo within stated boundries. The provisions of the act creating the district are similiar to the other legislative acts creating levee districts for the protection of lands and property from the destruction or damage by flood.

"Lands and other property in the district are subject to taxation, local assessments and forced contribution, to raise fund for the purpose of the act.

"The plaintiffs claim exemption from the levee taxes sought to be collected under the terms of the act, and assign for reason that their lands are left out and are not protected by the levees; that they receive no possible benefit, but positive injury, and that any tax, contribution or assignment imposed and levied are illegal and not within the powers of the levee commission.

"They interpose objection to the assessment imposed under Section 6 of the Act, and to the special assessment under section 7.

"The evidence shows that the levees at this time afford no protection to plaintiff's lands; that

they are between the levee and the natural banks of the river; that they derive no benefit from the location and construction of the levees, but on the contrary are damaged; that they are more exposed to overflow than prior to the construction of the levee built by the state, being part of the system of state levees in the Parish of Caddo, as located by state engineers adjudications upon the subject of local taxation for local improvement has been frequent. As early as the case of *Yeatman v. Crandall*, 11 An., 220, not the first adjudication upon the subject, it was decided that the legislature might lawfully erect any portion of the state it saw fit into a district for special local improvement and assess the cost exclusively upon the district. One of the justices in the case yielded his opinion expressed in several dissents and concurred with the court in holding that the article in question and similar articles under the constitution proceeding, were not intended to apply to municipal or local taxation for improvements. In the present decade also a number of adjudications have been made. In the last decided case there was an additional ground which is stated as follows:

"That the particular land of the plaintiff is subject to overflow, and is not protected by the levees built or proposed to be built; that it requires no such protection and can derive no possible benefit or advantage from the levees, and that, therefore, the assessments are a taxing of private property for public purpose without compensation."

"Passing upon the question, the court says that it is only where the assessment is manifestly unjust and oppressive that a court would be justified in overruling the legislative judgment. The legis-

lature necessarily has a large discretion on this subject. In carrying out this scheme of leveeing it has defined the limits by following certain lines of lands subject to overflow. It is not possible in defining these limits to consult personal interests or to exempt those lands not susceptible of receiving immediate benefits. These acts creating levee districts embrace entire areas; if exceptions were made it would probably defeat the purpose in adopting the law. Approximate or even remote equality would be an impossibility. Certain lands must, in the nature of things, receive much greater benefit than others. The exemption of certain lands from the operation of the law would defeat the legislative intent. Judicial interposition becomes delicate and exceedingly difficult. To interpose, it must be made manifest that the property is permanently and intentionally excluded from all possible benefits. We quote from *Cooley on Constitutional Limitations*, p. 509:

" 'In many other cases, besides, the construction, improvement and repair of streets may, in special taxing districts, be created with a view to local improvements. The cases of drains to relieve swamps, marshes and other lowlands of their **stagnant water**, and of levees to prevent being overflowed by rivers, will at once suggest themselves. In providing for such cases, however, the legislation exercises another power besides the power of taxation. On the theory that the drainage is for the sole purpose of benefiting the lands of individuals, it might be difficult to defend such legislation. But if the stagnant water comes to threaten disease it may be a nuisance, which, under its power of police, the state would have authority to abate.'

"The lands are included within the limits of the district." 45 An., 1233-1235.

In the case of *Degravelle v. Iberia & St. Mary Drainage District*, 104 La., 707, the whole question was again reviewed by the Supreme Court of Louisiana, and while the property of the plaintiff in that case could receive no direct benefit from the proposed drainage system, because it was already drained and the waters that fell upon it flowed into the Bayou Teche by gravity and would never enter the drainage system which it was proposed to install, nevertheless it was held liable for the *ad valorem* tax levied throughout the drainage district to pay for the drainage system.

"In his petition he admitted that his property was situated within the limits of the drainage district, but he averred that from its situation and condition it and all other property situated between Bayou Teche and the public road leading from Franklin to New Iberia was not in any wise benefited by the drainage system and work undertaken and contemplated by the board of commissioners, and that hence the tax, even if legal, in other respects was illegal, null and void, as to his property, and an unauthorized attempted exercise of taxing power by the commissioners, and the bonds, if issued, would operate as an incumbrance and burden upon the petitioner's property, thereby causing him irreparable injury. Plaintiff does not call in question the right of the general assembly or the police juries of the parish of Iberia and St. Mary to legally have created within the declared limits and boundries the Iberia and St. Mary Drainage District. His contention is that, notwithstanding his property is situated within the district, it is not subject to taxation. His prayer, if granted, would leave his property within the district for the purpose of the work of the

drainage board, and yet take it substantially out of the taxing district. We do not understand the plaintiff to contend that the judiciary has the power or authority to alter the limits and boundaries of the district. Drainage districts are established, either by the direct authority of the general assembly or by delegated authority to different political subdivisions of the state. The body exercising this authority determines over what territory the benefits are so far diffused as to render it proper for all lands to contribute to the cost of the drainage work. The whole subject of the determination of taxing drainage districts belongs to the legislature. When the fixing of the district is left for decision to a local board or body, it, for that purpose, exercises legislative power, and its action is as conclusive as if taken by the legislature itself. It has been repeatedly decided that the legislative acts assigning districts for special taxation for the benefits cannot be attacked on the ground of error in judgment regarding the special benefits, and defeated by satisfying a court that no special or particular benefits are received; that if the legislature has fixed the district, and laid the tax for the reason that in the opinion of the legislative body such district is peculiarly benefited, that is conclusive; that judicial judgment or opinion on that subject is not to be substituted for legislative judgment or opinion (*Cooley, Taxation, p. 459*), that the question is legislative, and conclusion reached on the subject being within the scope of legal power are not unlawful, because, like all legislative questions, the question may have been in some instance or to some extent decided erroneously (*Id., pp. 448-450*). *Cooley, on page 450* of his work, declares that the only exception which have been recognized to

this rule are those cases in which, under pretence of apportionment, a work of general benefit has been treated as a work of merely local consequence, and the cost imposed on some local community, in disregard of the general rules which control legislation in matters of taxation. On page 179 the author further says that: 'whatever is the rule established by legislation, it is presumptively as just and equal, in the opinion of the legislature, as the circumstances would permit. It is not to be questioned for impolicy, and cannot be overthrown by showing that in particular instances it operates unjustly.' In *Lockwood v. City of St. Louis*, 24 Mo. 20, it was said that 'it was one peculiarly of assessments that the measure of supposed benefits might be whatever appeared to the legislature just might be whatever appeared to the legislature most just under the circumstances.'

"The question submitted to us is not a new one in Louisiana. It has been repeatedly submitted and answered in the matter of local taxes for levee purposes, the decisions being adverse to the contention made by the appellant. Some of these decisions are referred to in *Hill v. Sheriff*, 46 La. An., 1566, and *George v. Sheriff*, 45 La. An., 1232. *Cooley*, on page 423, says: 'The district in this particular instance is a drainage district. The expense of constructing drains in order to relieve swamps, marshes and other low lands of their stagnant water is usually provided for by special assessments. The grounds on which this is done are not always very clearly indicated in the statutes. Sometimes the ground indicated is that the drainage is important to the public health, and in such cases the right to levy assessments for the purpose cannot plausibly be disputed. The special benefit from the enhancement of values must ac-

curre mainly to the owner of the lands drained, who ought, therefore, bear the expense. But the authority to levy assessments for draining lands upon no other consideration than such as pertain to the improvement of the land as property must, it would seem, be confined within limited bounds. It has been said that a tax cannot be levied upon any portion of the public for the construction of a drain in which the public are not concerned. Even the owner of the land benefited cannot be taxed to improve it unless public considerations are involved, but he must be left to improve it or not, as he may choose. But where any considerable tract of land owned by different persons is in a condition precluding cultivation by reason of excessive moisture, which drains would relieve, it may be well said that the public have such an interest in the improvement and the consequent advancement of the general interest of the locality as will justify the levy of assessment upon the owners for drainage purposes. Such a case would seem to stand upon the same solid ground with assessment for levee purposes, which have for their object to protect lands from falling into a like condition themselves.' We think it unquestionable that the drainage district in this instance was created in the interest of the locality. The tax levied could not be set aside as a whole, even if particular properties could, from some particular cause, escape payment of the same. The claim that plaintiff's particular property is not benefited by the proposed drainage work is not supported by the evidence, and, therefore, we need not discuss whether it would be specially exempted from taxation if it was in fact not benefited. We find it admitted that the rain water which falls upon the property described in plaintiff's petition flows into the Bayou

Teche; that the front portion or that portion fronting upon the public road, is higher than that portion which fronts upon the bayou;' that 'in the construction of this canal all of this water which falls upon this property could be drained into the canal;' that 'when the drainage of the district is completed by the Board of Commissioners of the Iberia and St. Mary Drainage District, it will drain and bring into cultivation something near twenty-five thousand acres of land, which otherwise is unfit for cultivation, being covered by water the larger portion of the year, especially in the rainy seasons, and drying out in the very dry seasons; that these lands, when drained, will be as productive as any situated in the district; and that it is the consensus of opinion of the inhabitants of said drainage district that when said property is drained, and the drainage system is completed, all lands situated within the limits of the said drainage district will be increased in value commercially.' It was further admitted 'that it is the opinion that the drainage of these low lands as above referred to will materially benefit the health of the inhabitant of the entire drainage district; that after the drainage is completed, the sugar refineries situated in said district will then be able to pump the refuse from their refineries into the canal, which will connect directly with the Gulf of Mexico, and thereby the waters of the Teche will be purified and made wholesome; that with the present system of pumping of refuse into the Bayou Teche, the water of said bayou during the rolling season becomes very offensive, emanating a stench that is not only very disagreeable, but is a menace to the health of the community, and interferes with commerce in the bayou; that the polluting of said water with refuse is a crime under the United States statutes, and that the proprietors of certain refineries have been

indicted and arrested therefor: and that it is a serious problem in some cases to dispose of said refuse.' " 104 La., 708-711.

In the case of *Bernard v. Bayou Portage Drainage Dist.*, 130 La., 637, the constitutionality of the drainage laws was again upheld.

In the case of *Myles Salt Co. v. Iberia & St. Mary Drainage Dist.*, 134 La., 903, the court reaffirmed the principles approved in the *Degravelle* case, and held that:

"A property owner, whose property has been included within a drainage district, cannot, without alleging fraud in the formation of the district, maintain a suit to have the tax set aside on the mere allegation that his property will not be benefited by the expenditure of the drainage district tax fund to which he is made to contribute."

It is obvious that the general principles announced as governing such cases were correctly appreciated by the Supreme Court of Louisiana and the error committed by the court in deciding the last mentioned case was due, as we believe, to the fact of the court's overlooking the fact that a fraud was substantially charged in the creation of the taxing district.

PLEA OF ESTOPPEL.

The sixteen cents per acre tax was capitalized into an issue of \$500,000.00 of bonds of the district, which are payable alone from that tax, and there can be no doubt that an

attack on the tax is equivalent to an attack on the bonds. As these bonds are now in the hands of *bona fide* holders, it would seem that for plaintiff to succeed in annulling the tax and thereby repudiating the bonds, it would be incumbent on him to show some fraud or nullity patent on the face of the bonds or lack of power in the board to issue them. No fraud is charged, and there can be no question about the authority or power of the board to issue the bonds after having been authorized to do so by a vote of a majority in amount of the property taxpayers of the district voting at an election.

This court has repeatedly held that in dealing with the validity *vel non* of negotiable bonds, it would be governed by the laws applying to negotiable instruments, and would not consider as binding on it the decisions of the different state courts; and that in determining whether an issue of negotiable bonds were valid or not, where they were in the hands of *bona fide* owners, it would only look to the power of the municipality to issue the bonds at all, and would not concern itself with any latent or non apparent nullities that did not appear from an inspection of the bonds themselves.

The court has also decided repeatedly that the right to enforce or protect a constitutional right in a court of equity may be lost by laches, the same as other rights.

The question to be considered in this connection, is, under the circumstances hereinbefore set forth, the corporation (and by corporation is meant not only the board, but also the owners of property subject to taxation in the district) estopped from repudiating the negotiable bonds, payable to bearer, in the hands of innocent *bona fide* holders for value?

As we have seen, the board had the power, under Art. 281 of the State Constitution, Act 145 of 1902 and Act 256 of 1910, when authorized by a majority in number and amount of the taxpayers residing within the drainage district to levy an acreage tax, not exceeding fifty cents an acre, on all lands in the district, and to issue negotiable bonds, payable out of said tax. Therefore, there could not possibly be any question as to the power of the board to issue the bonds now held by *bona fide*, holders for value.

"Where there was in the first instance authority to issue the bonds, a municipal corporation, by levying taxes and paying the interest thereon for a series of years, is thereby estopped from denying their validity by reason of any irregularities in their issue, such as a defect in the election or notices thereof, an irregular or defective consent of the council, a defective execution of the bonds with respect to the date and signature or in the description of the payee, an irregularity in the delivery or registration of the bonds."

Ency. of U. S. Supreme Court Reports, Vol. 8, pp. 738, 739, 740.

"The acts of a municipality which estop it from denying the validity of its bonds in a suit by a *bona fide* holder of the same and the acquiescence of the taxpayers therein, conclude such taxpayer from contesting the validity of the bonds."

Ib., p. 741.

The bonds are payable to bearer, and recite on their face the article of the Constitution and the law under which they were issued, and have endorsed on them the certificate of

the Secretary of State, under the Great Seal of Louisiana, certifying that they are payable from the proceeds of a tax.

The case of *County of Ray v. Van Sycle*, 96 U. S., p. 675, was an action to recover the amount due on interest coupons attached to bonds, which were issued in 1869, in the name of County of Ray, Mo. Van Sycle was a lawful holder for value of the bonds and received them without actual notice or knowledge of any defects or irregularities in the issue. The defence made was that the county court was without authority to issue the bonds. The court said:

"But whatever doubt exists upon this point should be resolved in favor of the *bona fide* holders of the bonds. The taxpayers of the county should not, under the peculiar circumstances of this case, be now heard to allege that their agents invested by statute with the authority and charged with the duty of protecting their interests, had exceeded these powers. The court levied and collected a tax to pay interest due on the bonds delivered to the St. Louis & St. Joseph Railroad Company for the years 1869, 1870, 1871, 1872 and 1873. The coupons were annually paid for the first four years."

County of Ray v. Van Sycle, 96 U. S., p. 687.

In the case of *Pompton v. Cooper Union*, 101 U. S., 203, the Court said:

"If any error or wrong was committed in issuing the bonds, it was the act of the agent of the plaintiffs in error.

"Where one or two innocent persons must suffer a loss, and one of them has contributed to produce it, the law throws the burden upon him and not upon the other party. *Hearn v. Nichols*, 1 Salk., 289; *Merchants Bank v. State Bank*, 10 Wall., 604.

"The bonds in question recite on their face that they were issued in pursuance of an act of the Legislature of New Jersey, approved April 9th, 1868, entitled 'An Act to Authorize Certain Townships, Towns and Cities to Issue Bonds and Take the Bonds of the Mont Clair Railway Company.'

"In *Orleans v. Platt*, 99 U. S., 676, this court said: "The bonds in question have all the properties of commercial paper, and in view of the law, they belong to that category. *Murray v. Lardner*, 2 Wall., 210. This Court has uniformly held, when the question has been presented, that where a corporation has lawful power to issue such securities, and does so, the *bona fide* holder has a right to presume the power was properly exercised and is not bound to look beyond the question of its existence. Where the bonds on their face recite the circumstances which bring them within the power, the corporation is estopped to deny the truth of the recital. *Mercer County v. Hackett*, 1 Id., 183; *San Antonio v. Me-huffy*, 96 U. S., 312; *County of Moultrie v. Savings Bank*, 92 Id., 631; *Moran v. Commissioners of Miami County*, 2 Black, 722; *Knox v. Aspinwall*, 21 How., 539; *The Royal British Bank v. Turguand*, 6 El. & Bl., 325.'

"These rules are the settled law of this court."
Pompton v. Cooper Union, 101 U. S., 203, 204.

In the case of *Knox County v. Aspinwall*, 21 How., 539, the facts of the case were as follows:

The Commissioners of Knox County were required to subscribed to the stock of the Ohio and Mississippi Railroad Company, if a majority of the qualified voters of said county, at any annual election, within five years after the books of said railroad company were opened, voted for the same. The following year, the commissioners were re-

quired to give notice of an election to be held on the first Monday of March of that year. The board of commissioners, on February 26, 1849, preceding the date of the election, subscribed to \$20,000.00 of the stock of the railroad, and, also, at a meeting on the 26th of October, 1850, after reciting that, in accordance with the wishes of the county, as expressed at the election held for that purpose, in the several townships on the first Monday of March, 1849, **executed and delivered the bonds of the county, as provided for in the law authorizing the subscription to the stock of the railroad, with coupons for interest attached. Payment of the interest coupons was resisted on the ground of want of authority to issue the bonds, because of the alleged omission to give the required notice of the election, at which a vote was to be taken for or against a subscription of stock to the railroad company. In that case, the court said:**

"The court is of the opinion that the question belonged to the board. The act makes it the duty of the sheriff to give the notices of the election for the day mentioned and then declares, if a majority of the votes shall be in favor of the subscription, the county board shall subscribe the stock. The right of the board to act in an execution of the authority is placed upon the fact that a majority of the votes had been cast in favor of the subscription; and to **have acted without first ascertaining it, would have been a clear violation of the duty and the ascertainment of the fact was necessarily left to the inquiry and judgment of the board itself, as no other tribunal was provided for the purpose. This board was one from its organization and duties fit and competent to be the depository of the trust thus confided to it. The persons composing it were elected by the county; and it was already invested with the**

highest functions concerning its general police and fiscal interests.

"We do not say that the decision of the board would be conclusive in a direct proceeding to inquire into the facts previously to the execution of the power, and before the interest of third parties had attached; but after the authority has been executed, the stock subscribed, and the bonds issued, and in the hands of innocent holders, it would be too late, even in a direct proceeding, to call it in question. Much less can it be called in question to the prejudice of a *bona fide* holder of the bonds in this collateral way.

"Another answer to this ground of defense is, that the purchaser of the bonds had a right to assume that the vote of the county, which was made a condition to the grant of the power, had been obtained, from the fact of the subscriptions, by the board, to the stock of the railroad company, and the issuing of the bonds."

Commissioners of Knox County v. Aspinwall, et al., 21 How., 544, 545.

In the case of *Mercer County v. Hackett*, 1 Wall., 83, the Court said:

"Where a county issues its bonds, payable to bearer, and solemnly pledges the faith, credit and property of the county, under the authority of an act of assembly, referred to on the face of the bonds by date, for their payment, and those bonds pass *bona fide*, into the hands of holders for value, the county is bound to pay them. It is no defense to the claim of such holders that the act of the assembly, referred to on the face of the bonds, authorized, the county to issue the bonds only and subject to certain 'restrictions, limitations and conditions,' which have not been formally complied with;

nor that the bonds were sold at less than par, when the act authorizing their issue and referred to by date on the face of the instrument declared that they should, in no case, nor under any pretense be sold.

"Corporation bonds payable to bearer, have, in this day, the qualities of negotiable instruments. The corporate seal upon them does not change the case." *Mercer County v. Hackett*, 1 Wall., 83

To the same effect are the cases of:

Gelpcke v. City of Dubuque, 1 Wall., 175;
Meyer v. City of Muscatine, 1 Wall., 385;
Rogers v. Burlington, 3 Wall., 667.

In the case of *Mayor v. Lord*, in the 9 Wall., p. 409, the Court said.

"It is not denied that the relator was an innocent purchaser. In that event, if the bonds could have been properly issued under any circumstances, he had a right to presume they were so issued, and against him the city is estopped to deny their validity." 9 Wall., 414.

In the case of *Supervisors v. Schenck*, 5 Wall., 772, the court fully discussed the difference between the right to contest the validity of a bond issue before the bonds have been issued and sold, and the right to contest such an issue after the bonds have passed into the hands of innocent third parties, and been acquiesced in by the corporation by the levy and the payment of a tax by the corporation through a series of years. The syllabus of that case indicates fully the conclusions arrived at by the court, and is, as follows:

"The levy of a tax and payment of interest by the proper county authorities, validates, in the hands of *bona fide* holders for value, county bonds, issued in their origin, irregularly as es. gr. in virtue of a popular vote ordered by a 'County Court,' instead of one ordered by the board of supervisors; the vote, however, and other proceedings having been in all respects other than the source of order regular.

"In this case, the tax had been levied and the interest paid by the county for nine years before it was set up that the bonds were void." 5 Wall., 772.

Again:

"It may well be doubted whether the appellees are in a position to question the validity of a statute. They are the owners of the 'Kall' tract mentioned in the first section of the act, and with respect to which it was made a condition that the owners should dedicate the land in said tract contained within the lines of the streets to be extended; and, it appears by the record, that, in order to procure the desired action of the commissioners, they did dedicate to the District of Columbia for highway purposes the land in said tract contained within the lines of S. Twenty-second and Decatur Streets.

"Prior to the filing of the petition of the commissioners, the authorities of the District had taken no steps towards the contemplated extension of these streets. In fact, under the act, they had no power to do so. The power was called into action by the dedication of the 'Kall' tract, by such dedication the appellees put the act into operation, and voluntarily subjected themselves to its provisions, including the mode of assessment. The constitutional right against unjust taxation is given for the protection of private property, and may be waived by those affected, who consent to such action to their property as would otherwise be invalid.

"Under some circumstances, a party who is illegally assessed may be held to have waived all right to a remedy by a course of conduct which renders it unjust and inequitable to others that he should be allowed to complain of the illegality. Such a case would exist if one should ask for and encourage the levy of the tax of which he subsequently complains; and some of the cases go far in the direction of holding that a mere failure to give notice of objections to one who, with knowledge of the person taxed, as contractor or otherwise, is expending money in reliance upon payment from the taxes, may have the same effect.' *Cooley on Taxation*, 573; *Tagh v. Adams*, 10 *Cush.*, 253; *Bidwell v. City of Pittsburgh*, 85 *Penn.*, 412; *Lafayette v. Fowler*, 34 *Ind.*, 140; *Shutte v. Thompson*, 15 *Wall.*, 151." *Wright v. Davison*, 181 *U. S.*, 377.

See, also, authorities reviewed in this connection in the *Reasons for Judgment*, *supra*.

The writers, therefore, submit that the case is with the Defendants in Error, on all points, and the judgement should, in any event, be affirmed.

WM. WINANS WALL,

Attorney for Defendants in Error.

N. H. NUNEZ,

District Attorney, Ex-Officio Attorney for the Bayou
Terre-Aux-Boeufs Drainage District.

Mr. William Winans Wall, with whom *Mr. N. H. Nunez* was on the brief, for defendants in error.

MR. JUSTICE McREYNOLDS delivered the opinion of the court.

By petition filed in the District Court, St. Bernard Parish, plaintiff in error sought to restrain collection of an acreage tax assessed against its lands not susceptible of gravity drainage. Invalidity of the tax was alleged upon the ground that no statute of Louisiana authorized it and also because its enforcement would produce practical confiscation and take property without due process of law contrary to the Fourteenth Amendment. Answering, defendant in error asked dismissal of the petition, claiming the tax was properly assessed and also that an amendment to Article 281 of the Louisiana Constitution, adopted November, 1914, deprived the court of jurisdiction to entertain the contest. The trial court exercised jurisdiction, sustained the tax and dismissed the petition. Upon a broad appeal the Supreme Court, after declaring that the constitutional amendment deprived the courts of the State of jurisdiction over the controversy, affirmed the judgment of the trial court. 142 Louisiana, 812.

The record fails to disclose that plaintiff in error at any time or in any way challenged the validity of the state constitutional amendment because of conflict with the Federal Constitution until it applied for a rehearing in the Supreme Court. That application was refused without more. Here the sole error assigned is predicated upon such supposed conflict; and, unless that point was properly raised below, a writ of error cannot bring the cause before us.

Such a writ only lies to review "a final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in

question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity." Judicial Code, § 237; Act September 6, 1916, c. 448, 39 Stat. 726.

The settled rule is that in order to give us jurisdiction to review the judgment of a state court upon writ of error the essential federal question must have been especially set up there at the proper time and in the proper manner; and further, that if first presented in a petition for rehearing, it comes too late unless the court actually entertains the petition and passes upon the point. *Mutual Life Insurance Co. v. McGrew*, 188 U. S. 291, 308; *St. Louis & San Francisco R. R. Co. v. Shepherd*, 240 U. S. 240; *Missouri Pacific Ry. Co. v. Taber*, 244 U. S. 200.

The writ of error is

Dismissed.

THE CHIEF JUSTICE concurs in the result, solely on the ground that as the court below exerted jurisdiction and decided the cause—by the judgment to which the writ of error is directed—the contention that a federal right was violated by the refusal of the court to take jurisdiction is too unsubstantial and frivolous to give rise to a federal question.

GODCHAUX COMPANY, INCORPORATED, *v.* ESTOPINAL, SHERIFF OF THE PARISH OF ST. BERNARD, ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 101. Argued November 17, 18, 1919.—Decided December 22, 1919.

A writ of error will not lie under Jud. Code, § 237, as amended, to review a judgment of a state court upon the ground that it erroneously sustained an amendment to the state constitution, where the validity of such amendment under the Federal Constitution was first drawn in question by a petition for rehearing which was not entertained. P. 180.

Writ of error to review 142 Louisiana, 812, dismissed.

THE case is stated in the opinion.

Mr. R. C. Milling, with whom *Mr. R. E. Milling* was on the briefs, for plaintiff in error.